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The Efficiency of Institutions in Regards to Disputes within the Arctic: A Case Study of the Beaufort Sea and the Barents Sea Disputes

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Le mémoire intitulé

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Abstract

The presence of resources in the Arctic, whether discovered or estimated, has encouraged Arctic states to scramble for both territory and natural resources. Such potential of undiscovered resources within the Arctic has the possibility to worsen existing disputes, or lead to conflicts. It can further cause tensions between various Arctic states. The focus of this paper is on the role of two international institutions present in the Arctic, the United Nations Law of the Seas (UNCLOS) and the Arctic Council, and to determine their efficiency at maintaining peace and facilitating cooperation surrounding territorial and resource disputes. The first step is to analyze both institutions, with the intention of better understanding their mechanisms. In order to determine their efficiency, two case studies will be used. The first is the Barents Sea dispute between Norway and Russia. The second is the Beaufort Sea dispute between Canada and the United States. One conclusion is found through the analysis of the institutions, and another is found through the two case studies. The first is that the Arctic Council, as a cooperation forum focused on environmental issues, has been unable to adapt its mandate to one of dispute resolution. It has also been found that it is unlikely to adapt itself towards a dispute orientation. The second conclusion is that of the mitigated role of UNCLOS within the Arctic, when it comes to dispute resolution. While it has been shown to be effective in resolving the Barents Sea dispute, it has had limited success in regards to the Beaufort Sea dispute. Ultimately, despite UNCLOS' limited success, Arctic states have shown a desire to cooperate and solve common problems through the assistance of institutions.

Résumé

La présence de ressources dans l'Arctique, qu'elles soient découvertes ou estimées, a encouragé les États de l'Arctique à une ruée vers territoire et ressources naturelles. Ce potentiel de ressources inconnues dans l'Arctique a la possibilité d'aggraver les différends existants ou de conduire à des conflits. Il peut également causer des tensions entre les divers États de l'Arctique. Le présent mémoire porte sur le rôle de deux institutions internationales présentes dans l'Arctique, soit la Convention des Nations-Unies sur le droit de la mer et sur le Conseil de l'Arctique, notamment sur leur efficacité dans le maintien de la paix et la coopération en matière territoriale et de ressources. La première étape consiste à analyser les deux institutions, dans le but de mieux comprendre leurs mécanismes. Afin de déterminer leur efficacité, deux études de cas seront utilisées. La première est la dispute de la mer de Barents entre la Norvège et la Russie. La deuxième est le différend relatif à la mer de Beaufort entre le Canada et les États-Unis. Une conclusion est déterminée grâce à l'analyse des institutions, et une autre est trouvée par les deux études de cas. La première est que le Conseil de l'Arctique, en tant que forum de coopération axé sur les questions environnementales, n'a pas été en mesure d'adapter son mandat à celui du règlement des différends. Il a également été constaté qu'il est peu probable qu'il s'adapte à l'orientation des différends. La deuxième conclusion est celle du rôle mitigé de l'UNCLOS dans l'Arctique, lorsqu'il s'agit de régler les différends. Bien qu'il ait été démontré qu'il a été efficace pour résoudre le différend relatif à la mer de Barents, il a eu un succès limité en ce qui concerne le différend relatif à la mer de Beaufort. Par contre, malgré le succès limité de l'UNCLOS, les États de l'Arctique ont manifesté le désir de coopérer et de résoudre les problèmes communs à travers l'assistance des institutions.

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INTRODUCTION

Background

Climate change is a phenomenon that impacts humanity on a planetary scale. The Arctic, despite its remoteness, does not escape this reality. Due to global warming, the region is becoming increasingly accessible. Over the last decades, there has been a consistent general downtrend of sea-ice extent—the total area of ice—and sea-ice volume.[1]

To corroborate this statement, it has been observed that the years 2007 to 2012 were years where September sea-ice was considerably lower than both the 1979-2000 average and the 1979-2010 average.[2] The linear rate of decline of sea-ice extent, measured in January 2015, was 3.2% per decade.[3] In absolute numbers, in 2015, sea-ice extent reached 13.62 million square kilometers. In comparison, the 1981-2010 historical average is 14.53 million square kilometers. Furthermore, in 2011, sea ice extent had reached a record low, at 14.02 million square kilometers[4].

In parallel to this reduction, with its May 2008 survey, the United States Geological Survey (USGS) has estimated that the Arctic could hold about 13 percent of the world's undiscovered oil reserve and 30 percent of undiscovered gas reserve. Moreover, the survey estimated that 84 percent is expected to be found offshore.[5] This reality has the potential to lead to an increased interest in the region. On one side, sea-ice extent is reducing, increasing accessibility to the Arctic Ocean. On the other side, more and more resources are being found offshore of Arctic coasts. While not the only factor, natural resources, including mineral and fisheries, are a key aspect of a marked increase in attention given to the Arctic. One perceived

1 National Snow & Ice Data Center. (2012). Arctic Sea Ice Extent Settles at Record Seasonal Minimum. Retrieved from http://nsidc.org/arcticseaicenews/2012/09/arctic-sea-ice-extent-settles-at-record-seasonal-minimum/
2 Ibid.
3 National Snow & Ice Data Center. (2015). Arctic Sea Ice News & Analysis. Retrieved from http://nsidc.org/arcticseaicenews/
4 Ibid.
5 Ernst & Young Global Limited. (2013). Arctic Oil and Gas. P. 3. Retrieved from http://www.ey.com/Publication/vwLUAssets/Arctic_oil_and_gas/$FILE/Arctic_oil_and_gas.pdf

and often discussed risk of this greater accessibility coupled with the richness of the Arctic is the potential for conflicts over territories rich in natural resources.

Geographically speaking, while there are numerous definitions of the Arctic, the chosen definition is of the Arctic with its boundaries north of the Arctic Circle (66◦ 33'N).[6] There are eight countries bordering the Arctic: Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States. However, of these eight countries, only five are Arctic littoral states: Canada, Denmark (through Greenland), Norway, Russia and the United States (through Alaska).

In 2007, Russians planted a titanium flag 13,890 feet below the surface, at the North Pole, while collecting scientific data to submit a claim for an extension of their continental shelf.[7] This action, which can be interpreted as a catalyst to dispute in the Arctic, is in fact seen by most as "part of a carefully planned operation to assert Russia's claim over part of a region that seemed to belong to no one".[8] Russia's intention in this endeavor was made clear when Chilingragov, who is a close confident of President Vladimir Putin, declared "[the] Arctic is ours and we should manifest our presence".[9] More than being, at the time, a potential catalyst, it was also a symbol of some concerns about Russia, that it would unilaterally lay claims to large parts of the Arctic, with no regards to international law. To this action was followed a strong international reaction, especially by bordering countries, the act being interpreted as threatening.[10]

The potential large amounts of resources, the possibility of disputes regarding sovereignty and territory, and overlapping claims over extended continental shelf are all factors that can potentially shatter the peace that has been ongoing in the Arctic.

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[6] Bunik, I. V. (2008). Alternative Approaches to the Delimitation of the Arctic Continental Shelf. *International Energy Law Review*, (4), p. 114
[7] Howard, R. (2009). *The Arctic Gold Rush* (1st ed.). England: Continnum. P. 2
[8] *Ibid.* P. 3
[9] *Ibid.*
[10] *Ibid.* P. 6

Two contending paradigms in international relations will be considered in relations to two existing disputes. Specifically, the interest will be on how the disputes have unfurled over the years in terms of resolution, or lack thereof.

On one hand, there is realism, which focuses on state power.[11] For the purpose of this thesis, the emphasis will be on neoclassical realism. On the other hand, there is liberalism, which is presented by Moravcsik as a "social scientific theory of international relations" which aims to "explain what states do, not what they should do".[12] Neoliberalism, a strand of liberalism, will be studied.

It is important to understand that realism does not put into question the legitimacy of a state's sovereignty within its own territory. Rather, they see national politics as a "realm of authority and law". Realism is solely focused on international politics. It is that sphere that realists claim that is without justice, and "characterized by active or potential conflict among states".[13]

Research Objectives and Hypothesis

The possibility of disputes within the Arctic should not be ignored. There are currently territorial claims in the Arctic that could have important natural resource implications, which in turn could potentially lead to disputes. The aim of this thesis is to analyze whether the institutions present in the Arctic are sufficient to maintain the existing peace. Based on the neoliberal paradigm, we can expect that they are. In contrast, based on the neoclassical realism paradigm, we can expect the opposite. In this case, we are to assume that there is potential dispute escalation.

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[11] Donnelly, J. The Ethics of Realism. *The Oxford Handbook of International Relations*, Oxford: Oxford University Press, 2008, p. 150

[12] Moravcsik, A. (n.d.). Liberalism and International Relations Theory. *Harvard University and University of Chicago*, (92-6)

[13] Korab-Karpowicz, W. J. (2013). Political Realism in International Relations. The Stanford Encyclopedia of Philosophy. Retrieved from http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=realism-intl-relations

To analyze whether the institutions are efficient or not, this thesis intends to answer the following question: In light of the existing disputes regarding territorial claims in the Arctic, can we find the institutions present in the Arctic, in this case UNCLOS and the Arctic Council, to be efficient in safeguarding the existing peace in the region through dispute resolution?

The working hypothesis of this paper is that the institutions present—namely UNCLOS as a hard law institution and the Arctic Council as a soft law institution—are sufficient in resolving on-going disputes in the Arctic and preventing new disputes from escalating. It is believed that UNCLOS, as per its role and its provisions for settlement of disputes, combined with the positive influence of the Arctic Council on Arctic cooperation, are sufficient in attaining dispute resolution.

Overview

This thesis will be divided into four chapters. The first one will be literature review and the methodology. The second will be dedicated to the institutions under study, UNCLOS and the Arctic Council. The third chapter will be devoted to the disputes themselves, and include the in-depth analysis. The fourth chapter will be the conclusion.

The first chapter will be divided into two different sections. The first section will be on the literature review. The literature review will introduce and expand on both theories. It will also define key concepts found within the hypothesis. The literature review will be linked to the working hypothesis of this paper. To achieve this aim, an emphasis will be put on how disputes and institutions are seen from both standpoints. This section will act as a guideline through the research, especially through data collection and analysis. The second part of this section will be to describe the chosen methodology. The methodology will be chosen in accordance to the verification of the hypothesis. The chosen disputes will be studied with the lens of neoclassical realism and neoliberalism, with an emphasis on either how effective the institutions have been in resolving the dispute (in the case of the Barents Sea), or its limitations with the other one (the Beaufort Sea).

The second chapter will be the foundation for the analysis, and it will be divided into two sections. It will address both institutions, UNCLOS and the Arctic Council. The first section will emphasize on UNCLOS, and the second on the Arctic Council. As this thesis is on the Arctic, the emphasis on UNCLOS will be in regards to its implication for the region. In both cases, a brief history of the institutions will be detailed, followed by a description of their mechanisms and scopes. A particular interest will be put on dispute resolution dispositions for the former, and the ability to foster cooperation for the latter. The applicability for the Arctic will be explored (in UNCLOS' case), as well as their impacts in the region, their contribution in building the current Arctic peace, and their limitations. This section will not be specific to the disputes themselves; rather, it will study general mechanisms to resolve disputes, including institution's role in fostering peace and encouraging diplomatic relations. Its aim is to give insights as to how they are sufficient to regulate disputes of the magnitude of the Beaufort and Barents Sea. It is crucial to better understand the disputes that will be studied, in order to assess their impacts, both real and potential, and their limitations. Given that the hypothesis aims to validate that the institutions are sufficient in maintaining the peace within the Arctic, an emphasis will be put on the dispute dimension. As such, UNCLOS' dispute settlement will be studied in-depth in order to provide a better understanding of the various mechanisms at play. As for the Arctic Council, the interest will be put on its role as a mediator.

The third chapter will be the core of the study, as it will be entirely dedicated to the disputes under study, the Barents and Beaufort Sea, and the Gulf of Maine. It will also be divided into three sections, one per disputes. As per the institutions, the first step will be to trace the history of the disputes. However, in this case, it will be more detailed, as it will prove significantly important in understanding them. In turn this will prove important in understanding, in the Barents Sea and Gulf of Maine's case, how it was resolved, and in the Beaufort Sea's case, why it hasn't. It will also permit an understanding of the similarities and differences between the disputes. While tracing its history, a particular interest will be given in how the institutions have shaped the disputes and aided in either the resolution, or in reaching a temporary consensus. The first two disputes to be analyzed are those that have

been resolved (Barents Sea and Gulf of Maine). The analysis will relate to the one of the institutions, in order to determine how (if) their provisions have helped in any form the countries to settle their dispute and come to an agreement. A similar analysis will be done with the Beaufort Sea, constantly linking to both institutions. However, other factors of importance that have assisted or hindered in reaching a consensus acceptable by the countries will equally be considered. The disputes will equally be compared, not in term of their nature, but rather in term of dispute resolution. This will serve order to determine whether the Barents Sea and Gulf of Maine disputes can act as guides for the Beaufort Sea ongoing dispute. Ultimately, the analysis of the disputes will permit to verify the hypothesis, and determine whether the institutions by themselves are sufficient in maintaining the current peace within the Arctic.

The fourth and final chapter will serve as the conclusion. There will be a summary of the two disputes in the Arctic and of the Gulf of Maine, and the roles that the institutions played. Recommendations will also be explored in regards to the Beaufort Sea dispute.

Chapter 1: LITERATURE REVIEW AND METHODOLOGY

1.1 Literature review

By scanning existing literature on the Arctic, the Barents Sea dispute and the Beaufort Sea dispute, as well as other disputes present in the Arctic, two contrasting points of view become apparent. One tends to be more pessimistic about the state of affairs in the region, while one tends to be more optimistic. That is, one tends to believe that current institutions are insufficient in resolving ongoing disputes, while the other believe that they are.

Dodds, in the abstract of his paper 'Squaring the Circle: The Arctic States, "Law of the Sea", And the Arctic Ocean' (2014), resumes well the two current positions in existing literature. One vision is that of a 'scramble for resources and territory', while the other rejects it, with the beliefs that current institutions are able to mediate current disputes—as well as potential new ones.[14]

Rothwell, professor of international law, argues in his paper 'The Arctic in International Law: Time for a New Regime?' (2008) that the timing, due to current circumstances in the Arctic, is right for the development of an Arctic Treaty similar to that of Antarctica.[15] Holmes, in her paper 'Breaking the Ice: Emerging Legal Issues in Arctic Sovereignty" (2008) also conclude that overlapping claims would be better handled by an overarching treaty similar to that of the Antarctic Treaty.[16] The author arrives to this conclusion by arguing that UNCLOS is unsuitable as an institution in managing disputes in the Arctic.[17] Carpenter, in his paper 'Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and how an Arctic Treaty Might Stop a New Cold War further argues of UNCLOS' inefficiency, stating it to be powerless in a case where a state refuses to acknowledge a decision rendered by the institution. The author further argues that because of this inability, and because of

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[14] Dodds, K. (2014). Squaring the Circle: The Arctic States, "Law of the Sea," and the Arctic Ocean. Eurasia Border Review, 5(1), p. 113.
[15] Rothwell, D. R. (2008). The Arctic in International Affairs: Time for a New Regime? *The Australian National University*, *8*(37), p. 8.
[16] Holmes, S. (2008). Breaking the Ice: Emerging Legal Issues in Arctic Sovereignty. *Chicago Journal of International Law*, *9*(1), p. 351
[17] *Ibid, p. 325*

overlapping territorial claims, "the specter of armed conflict […] looms over an already dire situation".[18] Emmerson, senior research fellow at Chatham House, supports that the main reason the Barents Sea dispute was resolved was not because of UNCLOS' assistance. He offers that it was mainly resolved due to economic incentive, mainly the presence of oil and gas.[19]

It is not solely scholars who tend to have a more pessimistic view of the state of affairs in the Arctic. A general consensus of the pessimistic view is a 'rush for resources'. The European Union made a suggestion, in 2008, that an Arctic Treaty be developed, using the 1959 Antarctic treaty as an inspiration.[20] Other commentators, such as the author Ed Struzik, have also argued in favor of an overarching treaty to aid in Arctic governance.[21]

Others in the literature do not necessarily argue for the creation of an Arctic Treaty similar to the Antarctic Treaty, but do recognize certain limitations in current Arctic institutions, mainly in the Arctic Council. Keil, Senior Fellow at The Arctic Institute, questions the efficiency of the Arctic Council in her text written for the think tank.[22] In another paper, she argues that the likelihood of geopolitical scramble for resources is unlikely, and in parallel, brings forth the potential challenges to be faced by Arctic institutions in environmental protection.[23] In their paper "The effectiveness of the Arctic Council" (2012), Kankaanpää and Young have a slightly more ambiguous view of the Arctic Council. They argue that while the Council has had success in the past, it now requires adjustments in order to remain relevant and effective in current Arctic affairs.[24] Pederson argues that Arctic states remain

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[18] Carpenter, B. (2009). Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and how an Arctic Treaty Might Stop a New Cold War. *Environmental Law*, *39*(215), P. 239

[19] Emmerson, C. (2010, September 29). Our friends in the north. *Russia Beyond the Headlines*. Russia.

[20] European Parliament. (2008). European Parliament resolution of 9 October 2008 on Arctic governance. Brussels

[21] Struzik, E. (2010, June). As the Far North Melts, Calls Grow for Arctic Treaty. *Yale Environment 360*. Retrieved from http://e360.yale.edu/feature/as_the_far_north_melts_calls_grow_for_arctic_treaty/2281/

[22] Keil, K. (2014). A New Model for International Cooperation. *The Arctic Institute*.

[23] Keil, K. (2013). The Arctic: A New Region of Conflict? The case of oil and gas. *Cooperation and Conflict*, 0(0), 1-29

[24] Kankaanpää, P., & Young, O. R. (2012). The Effectiveness of the Arctic Council. *Polar Research*, *31*,

unlikely to strengthen the Arctic Council's mandate, which could potentially dilute its influence over the years.[25]

The contrasting point of view to the scramble for resources is that of efficient institutions in managing disputes in the region. A text by an unnamed author in the Strategic Comments publications, 'Growing Importance of the Arctic Council' (2013) argues for just what the title states: That the Arctic Council's role in the region is expanding in light of increasing interest in the region.[26] Similar positive sentiments towards UNCLOS can be found in the literature. As it is argued in the paper 'Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims' (2013), UNCLOS is (1) sufficient to delegitimize traditional power-politics involved in disputes; (2) sufficient to handle such disputes; and (3) its role has yet to be challenged by the Arctic states. In short, UNCLOS enjoys recognition and acceptance as the framework for "establishing, defining, deciding and resolving disputes on maritime territorial issues".[27]

Other authors tend agree with this statement. In their analysis of the Barents Sea dispute, Moe, Fjærtoft and øverland acknowledge that while no individual factor can, by itself, explain the dispute resolution, UNCLOS played a significant role.[28] Literature on the Beaufort Sea, the unresolved dispute studied in this paper, also supports the view that institutions are sufficient in regulating disputes in the Arctic. In her paper, Baker notes that while calls for an overarching treaty in the Arctic continues from certain, there is a general consensus from both academics and policymakers that such a treaty is not presently necessary.[29]

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[25] Pedersen, T. (2012). Debates over the Role of the Arctic Council. *Ocean Development & International Law*, *43*(2), p. 154

[26] Growing importance of the Arctic Council. (2013). *Strategic Comments*, *19*(16), 2.

[27] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2013). Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims. *SAIS Review*, *33*(2), p. 41

[28] Moe, A., Fjaertoft, D., & Overland, I. (2011). Space and timing: why was the Barents Sea delimitation dispute resolved in 2010? *Polar Geography*, *34*(3), p. 156

[29] Baker, B. (2009). Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian-U.S. Cooperation in the Beaufort Sea. *Vermont Law Review*, *34*(057), p. 60

Other authors have a more neutral approach, giving weight to both UNCLOS as an institution and to external factors in explaining how disputes have been resolved or may be resolved in the future. Henriksen and Ulfstein recognize the potential role that UNCLOS played in the Barents Sea dispute resolution by acting as a guide in establishing a delimitation line in the disputed territory.[30] They further argue that the new accessibility of the region to maritime transport and natural resources were also influential factors in the resolution of the dispute.[31] Konyshev and Sergunin remark, in 'Russia's Policies on the Territorial Disputes in the Arctic' (2014), of Russia's emphasis of UNCLOS's key role in the Arctic. They also note that economic incentives were crucial in resolving the Barents Sea dispute.[32]From the literature, it becomes evident that neoclassical realism and neoliberalism views of the state of the Arctic region—both current and future—are predominant. Both theories interpret current Arctic affairs differently. The former as a potential scramble for resource and territory, while the latter as an arena of cooperation due to the influence of existing institutions. Despite conflicting views, both sides agree on the underlying assumption of increased international attention in the region, namely in its potential for resources.

Because of this existing contrast between scholar opinions on the topic, it becomes pertinent to analyze the disputes from two theoretical frameworks which relate to the general beliefs and opinions on the state of affairs within the region. For those who tend to be optimist, it has been found that they tend to believe that the institutions active within the Arctic sphere are sufficient in regulating current disputes, and preventing new ones for arising. They do not believe that more needs to be done. This relates to one of the theoretical framework that will be used in this paper, which is neoliberalism. For those who tend to be pessimistic, they tend to argue that institutions are—and will be, in their current state—unable to prevent a geopolitical scramble for territory and resources. Such scramble is core to the realist model of states seeking control over territory and vital resources as a defensive mechanism.

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[30] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), p. 6

[31] *Ibid*. p. 10

[32] Konyshev, V., & Sergunin, A. (2014). Russia's Policies on the Territorial Disputes in the Arctic. *Journal of International Relations and Foreign Policy*, *2*(1), p. 80

This paper's analysis will be done with the help of the two aforementioned theoretical frameworks, which are two contending theories in International Relations. They are neoclassical realism, which is a strand of realism, and neoliberalism—or liberal institutionalism—a strand of liberalism. It is important to note that while neoliberalism can be seen as a continuation of liberalism, it is equally, in some respects, similar to neorealism. As Keohane states, liberal institutionalism "borrows as much from realism as liberalism".[33]

There is a long-standing academic rivalry between the two schools of thoughts, between "idealist theories and realist facts"[34]. The rivalry is clearly brought to light by the aforementioned quote, biased towards the realism ideology. This rivalry is equally present in multiple spheres. For example, mercantilism does not escape opposition of ideologies; according to a scholar of international political economy, Robert Gilpin, "politics determines economics", while the liberal counterpart, which is normative in nature, states that "economics should determine politics".[35]

Prior to analyzing both theories, it is essential to define the key concepts found in the hypothesis. The concepts to define are those of disputes, conflict (to serve as a contrast), dispute resolution, and peace.

The definition of dispute can be quite ambiguous at times, and recognizing a dispute can be equally difficult. In fact, the existence of a dispute may itself be disputed by any of the concerned parties.[36] The Permanent Court of International Justice (PCIJ) defines a dispute as: "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons", while the International Court of Justice (ICJ) defines it as "a situation in which the two sides held clearly opposite views concerning the questions of the performance or

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[33] Baldwin, D. A. (1993). *Neorealism and Neoliberalism: The Contemporary Debate*. New York: Columbia University Press.
[34] Moravcsik, A. (n.d.). Liberalism and International Relations Theory. *Harvard University and University of Chicago*, 514
[35] Moravcsik, A. (1997). Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization*, *51*(4), p. 514.
[36] Schrewer, C. (2008). What is a Legal Dispute?. *International Law Between Universalism and Fragmentation*, P. 1, retried from: http://www.univie.ac.at/intlaw/95.pdf

non-performance of certain treaty obligations".[37] In his paper 'What is a Legal Dispute?' (2008), Schrewer concludes that a dispute must be in relation to identified issues and must have specific consequences. He does not conclude that actual damage is necessary for a dispute to exist, simply that the dispute itself be relevant.[38]

Conflict can be defined in terms of the actions, wants, needs or even obligations of the various parties at play. A conflict will arise due to mutually exclusive acts, wants, needs or obligations.[39] Nicholson, in his book "*Rationality and the Analysis of International Conflict*" (1992) differentiates between conflict behaviour, disagreement, conflict of interests—or simply as 'a conflict exists'. Conflict behaviour is when two parties are in a conflict and are devoting resources to damage the other, with the intention of inducing a favorable settlement for themselves. In contrast, a conflict of interest is a situation of incompatibility between two parties that could potentially lead to conflict behaviour. A disagreement is when the parties are unwilling to use conflict behaviour to solve an issue.[40]

When comparing the definition if dispute to the multiple definitions of conflict, similarities and differences arise. Conflict behaviour is of a greater magnitude than a dispute, as there are attempts for parties to damage one another. However, in both the case of a conflict of interest and of a disagreement, there is no such action. As such, these definition are much closer to the definition of dispute than is the one of conflict behaviour.

The United Nations issued, in 1988, a Handbook on the Peaceful Settlement of Disputes between States. This guide was meant to be descriptive rather than used as a legal instrument. Its purpose is to assist states in reaching peaceful settlements of disputes. The Handbook lists many ways in which a dispute may be resolved, such as negotiations, mediation, conciliation, arbitration, judicial settlement and other peaceful means.[41]

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[37] *Ibid.*
[38] *Ibid., p. 21*
[39] Nicholson, M. (1992). *Rationality and the Analysis of International Conflict* (1st ed.). Cambridge University Press., P. 11
[40] *Ibid.* P. 13
[41] Handbook on the Peaceful Settlement of Disputes between States (1992). Office of Legal Affairs, United Nations. Retrieved from http://www.un.org/law/books/HandbookOnPSD.pdf

For the purpose of this thesis, the chosen definition of peace is the operational definition given by Anderson (2004). It is defined as a political condition of "low levels of violence and mutually harmonious relationships."[42] This definition combines both negative peace, which is seen as a lack of violence, and positive peace, which focuses on harmony. Peace can be achieved either through institutions, practices or norms between parties. Based on this definition, it is more than an absence of war, hostilities or the avoidance of conflict. A lack of conflict does not necessarily translate into harmonious relations between states.

1.1.1 Neoclassical Realism

In today's literature, there are a variety of different strands of realism sharing some fundamental ideas, which are the anarchic state of the international system, and the primacy of the state. These two postulates lead to power politics, wherein the priority for states is the pursuit of power. This pursuit of power is one which dwarfs all other objectives.[43]

Classical realism bases its theories off of five assumptions, which are: (1) the anarchic international system; (2) the offensive military capability of each states; (3) uncertainty of the actions and intentions of other states; (4) the basic motive—the primal motive—is survival; and (5) states are strategic in their goal to survive.[44] These assumptions, while pessimistic, tend to give the impression that states will act defensively (i.e.: with the intension to survive), rather than aggressively. However, when taken as a whole, they can create the incentive for them to become belligerent.

There are two major realist interpretations of international affairs, classified as state-centric and system-centric.[45] The former, also deemed 'classical realism', is associated with

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[42] Verbeek, P. (2008). Peace ethology. *Behaviour*, *145*(11), p. 1500.
[43] Donnelly, J. The Ethics of Realism. *The Oxford Handbook of International Relations*, Oxford: Oxford University Press, 2008, p. 150
[44] Mearsheimer, J. J. (1994). The False Promise of International Institutions. *International Security*, *19*(3), p. 10.
[45] Gilpin, R. (n.d.). *Global Political Economy: Understanding the International Economic Order* (1st ed.). New Jersey: Princeton University Press.

Thuclydes—namely, the Melian Dialogue, which serves as the roots of realism[46]—, with Machiavelli, and with Hans Morgenthau, among others.

Morgenthau systemized his analysis of realism by creating six principles, which can be found in Politics among Nations. His main postulate, which is found in the first principle, is that politics is guided by human nature. Once this postulate is established, he moves to his second principle, which is the lighthouse guiding his theory through international politics; the concept of power. It is the concept of "interest defined in terms of power"[47]. This notion enables politics to become an autonomous sphere of action. Combining the first two concepts, it can be concluded that, according to Morgenthau, statesmen "think and act in terms of interest defined as power".[48] In turn, the supremacy of 'desire for power' allows for an analysis of a state's foreign policy despite the motives and intentions of statesmen. That is to say, the desire for power, in international politics, trumps all other human emotions.[49]

System-centric realism is also called structural realism or neorealism. Its main postulates are based on classical realism. They are, however, reformulated and adapted accordingly. It focuses less on human nature and tends to shy away from states and their domestic policies, rather focusing more on the international system. Consequently, neorealists put an emphasis on the anarchy of the system, and distribution of power. However, rather than seeing power as both a means and an end, "neorealists assume that the fundamental interest of each state is security and would therefore concentrate on the distribution of power."[50]

A fundamental difference between the two branches is the underlying factor explaining the desire for power. Classical realism dictates that it is due to human nature. Neorealism, dissociating itself from the human factor, needs a different cause. The theory believes that it

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[46] Korab-Karpowicz, W. J. (2013). Political Realism in International Relations. The Stanford Encyclopedia of Philosophy. Retrieved from http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=realism-intl-relations

[47] Morgenthau, H., Thompson, K. W., & Clinton, D. (2005). *Politics Among Nations: The Struggle for Power and Peace* (7th ed.). New York: McGraw-Hill Education.

[48] *Ibid.*

[49] *Ibid.*

[50] Korab-Karpowicz, W. J. (2013, summer). Political Realism in International Relations. The Stanford Encyclopedia of Philosophy. Retrieved from http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=realism-intl-relations

stems solely from the anarchic state of the international system.[51] Power becomes a defense mechanism, serving as a deterrent from potential attacks, but also as a means to defend itself against actual attacks.

For the purpose of this thesis, there will not be a focus on neorealism; rather, it will be placed on neoclassical realism. Neoclassical can be seen as going back to the roots of realism (classical), while expanding the scope of study (neo). It was coined by Gideon Rose in his 1998 article, published in 'World Politics'. For neoclassic realists, Thucydide's observation remains true: "The strong do what they have the power to and the weak accept what they have to accept".[52] Furthermore, neoclassical realists argue that the "scope and ambition of a country's foreign policy is driven first and foremost by its place in the international system and specifically by its relative material power capabilities."[53] This is the 'realist' aspect of their model.

Neoclassical realists argue that a state's foreign policy will be in accordance to both its place in the international system and by its relative power capabilities. They also argue that a country's relative power—by which is implied economic, military and political power—will influence the country's position in the international system. The systemic variable—a state's vulnerability due to the anarchy of the international system—has primacy.

They do, however, acknowledge that the link between relative power and a country's foreign policy is less than direct, and quite complex, because "systemic pressures must be translated through intervening variables at the unit level".[54] Neoclassical realism acknowledges that there is more than the state as the sole actor in International Relations. This is the 'neoclassical' aspect of the model.

Among these intervening variables, the theory argues that as choices are made by foreign policy leaders, and that it is their perception of relative power that matters. It also argue that

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[51] *Ibid.*
[52] Thucydides. (1954). *History of the Peloponnesian War* (Reprint Edition). New York: Penguin Classics. P. 402
[53] Rose, G. (1998). Neoclassical Realism and Theories of Foreign Policy. *World Politics*, *51*(1), p. 146
[54] *Ibid.*

state structure will have an effect on how they act, relative power being equal. Proponents of neoclassical realism believe that in order to understand the relationship between power and foreign policy, the context remains crucial and must be examined.

Consequently, neoclassical realism argues that a state's action is explained by three variables. On one hand, there are systemic variables, such as relative power. On the other hand, there are cognitive variables, such as leader's perception of relative power of other states, and their intentions. Last, there are domestic variables, such as the state structure.[55]

The causal logic of neoclassical realism is seen as such: The independent variable are systemic incentives—the international system—while the intervening variables are internal factors affecting power perception. A change in the independent variable will have an effect on the intervening variables, which will in turn affect the dependent variable, which is the foreign policy. It is a three-step causal chain: (1) the independent variable, exogenous to the state, is the relative power of a country in the anarchic international system; (2) the intervening variables, endogenous to the state, act as a transmission belt, filtering how the independent variable is analyzed; and (3) the dependent variable, in this case the foreign policy, is the outcome.

"Neoclassical realism posits an imperfect "transmission belt" between systemic incentives and constraints, on the one hand, and the actual diplomatic, military, and foreign economic policies states select, on the other."[56] This relates to the complexity between relative power and foreign policy, due to intervening variables—the internal factors related to perception of power, as previously mentioned. According to neoclassical realists, while in the short term policies tend to be inefficient or unpredictable, in the long term, policies traditionally mirror the distribution of power among states.[57]

Given this imperfect transmission belt, and the importance of intervening variables, ideas must be treated as elements of power. They are elements of power for two reason: (1) by their

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[55] *Ibid.* P. 152
[56] Lobell, S. E., Ripsman, N. M., & Taliaferro, J. W. (2009). *Neoclassical Realism, the State and Foreign Policy* (1st ed.). Cambridge: Cambridge University Press. P. 4
[57] *Ibid.*

nature; and (2) based on the individual/institution holding that idea. [58] Furthermore, ideas can influence at multiple levels: "through […] specific individuals; […] through institutions; and through the broader culture of the state."[59] The key level, in the context of this thesis, are 'institutions'. Institutions are shaper of ideas, and can influence the dependant variable, that is, the state's foreign policy. They can play a further role in promoting an idea, in three ways: (1) through the influence of a group of expert within it; (2) by encasing the idea in formal rules within the institution itself; and (3) through structural arrangements created by the institutions, determining how easily—or difficulty—an idea can reach the policy process.[60]

For neoclassical realists, just as ideas play a crucial role in foreign policy, conflicts are equally important. States and their leaders have an incentive to shift their resources from societal consumption to security consumption. While this holds true for any state, it varies from one to another, based on the leader's perception of its relative power in contrast to the international system. In turn, when a state's power grows, its relative power equally grows, affecting its foreign policy.[61] Equally, this will affect the state's military spending. Notwithstanding a state's desire to expand its military, society can act as an impediment, desiring to see more spending in societal consumption rather than military. A state has to "convince" society to spend; it can "coerce society into spending [and] can also try persuasion."[62] Mobilization becomes important, and nationalism is used as a tool, just as conflicts, which creates an "other" or an "adversary" with threatening policies. Adversaries are therefore another useful tool for mobilization.[63]

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[58] Kitchen, N. (2010). Systemic pressures and domestic ideas: a neoclassical realist model of grand strategy formation. *Review of International Studies*, *36*(1), p. 130
[59] *Ibid.*
[60] *Ibid.* p. 131
[61] Rathbun, B. (2008). A Rose by Any Other Name: Neoclassical Realism as the Logical and Necessary Extension of Structural Realism. *Security Studies*, *17*(2), p. 302
[62] *Idem.*
[63] *Idem. P. 303*

1.1.2 Neoliberalism

While realism can find its origins in Machiavelli, liberalism can find its own in the German philosopher, Immanuel Kant. Kant has said:

> *"The homage which each state pays (at least in words) to the concept of law proves that there is slumbering in man an even greater moral disposition to become master of the evil principle in himself (which he cannot disclaim) and to hope for the same from others...For these reasons there must be a league of a particular kind, which can be called a league of peace (foedus pacificum), and which would be distinguished from a treaty of peace (pactum pacis) by the fact that the latter terminates only one war, while the former seeks to make an end of all wars forever."*

This quote shows a more optimistic view of the international system, and shows the liberalism ideology's desire for "perpetual peace". While realism argues that a state seeks to maximize its security as a response to various incentives, liberalism argues that the international system, despite its anarchic state and potential for conflict, fosters the possibility for cooperation. Realism views the states as the only actors in the international system; neorealism even dissociates itself from the human factor. Liberalism does not agree with this postulate, arguing they are one of multiple actors—other actors can be institutions, such as non-governmental organizations (NGO) and international organizations, but also multi-national corporations and military alliances.[64]

Liberalism contrasts realism by putting a larger importance on cooperation and international institutions. This cooperation can be achieved through various means, such as agreements between different parties, consequently reducing the risk for stakeholders. In other words, cooperation is achieved through "mutual threat reduction".[65] This is the concept of common security, that security must be aimed as a cooperative measure between states, rather than one against all. Common security is the answer to the security dilemma, where actions taken by a state to increase its defensive abilities can lead to reciprocate measures from other states.

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[64] Maras, M.-H. (2014). *Transnational Security*. Florida: CRC Press. P. 27
[65] *Ibid.*

Kegley and Shannon's description and definition of liberalism can further be seen as opposing realism. For them, the paradigm of liberalism is established on the ideologies of reason, ethics and justice, which can lead to "a more orderly, just and cooperative world".[66] They further argue that it is a liberal's desire that the world's anarchic state can be policed by institutional reforms which would "empower international organizations and law."[67] To further emphasize this point, Doyle observes that there tends to be a peaceful restraint between liberal states. However, this restraint seems to disappear when considering the relations between a liberal and non-liberal state.[68] One reason proposed for this observation is the suspicion that the liberal state will have towards the non-liberal state.

The strand of liberalism that is of interest for this thesis, neoliberalism, does not dispute neoclassical realism's main assumption, which is the anarchic state of the international system. In fact, neoliberalism acknowledges such anarchy, and further argues that "international regimes can facilitate cooperation by reducing uncertainty".[69] A reduction in uncertainty will, in turn, augment the likelihood of cooperation between states. Proponents of the neoliberal theory believe that regimes help actors in world politics "to make mutually beneficial agreements that would otherwise be difficult or impossible to attain".[70]

Keohane, a proponent of neoliberal institutionalism, argues that, despite the postulates of realism, there is a logical fallacy in assuming an impossibility of accordance and cooperation in the international system. Governments, notwithstanding their egoistical nature, and regardless of the anarchic state of the international system, can "rationally seek to form international regimes on the basis of shared interest".[71] Neoliberals emphasize mutual benefits and mutual gains, and view institutions as facilitators of such compromise, augmenting the capability of trust between states. To further emphasize this concept, Krasner

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[66] Kegley, C. W., & Blanton, S. L. (2009). *World Politics: Trends and Transformations* (12th ed.). Boston: Cengage Learning. P. 32
[67] Ibid.
[68] Doyle, M. W. (1986). Liberalism and World Politics. The American Political Science Review, 80(4), p. 1156
[69] Keohane, R. O. (2005). After Hegemony: Cooperation and Discord in the World Political Economy (1st ed.). New Jersey: Princeton University Press. P. 97
[70] *Ibid.* P. 88
[71] Keohane, R. O. (2005). *After Hegemony: Cooperation and Discord in the World Political Economy* (1st ed.). New Jersey: Princeton University Press. P. 107

argues that the basic function of regimes is to act as coordination-facilitator in state behaviour.[72]

There are certain elements that can impede such aim. For example, like previously noted, liberal states can become suspicious of non-liberal states. This sense of suspicion can lead to "restrictions on the range of contacts between societies, [which can in turn] increase the prospect that a single conflict will determine an entire relationship".[73] Another example, relevant to the Arctic, is extreme scarcity. Moravcsik indicates that extreme scarcity tends to worsen potential conflicts over resources, since implicated actors will be more willing to assume the cost and risk to obtain them. In contrast, abundance reduces the odds of conflict over a resource.[74]

However, despite scarcity, institutions have a positive influence in aiding states to develop agreements to "organize and govern themselves to obtain continuing joint benefits when all face temptations to free-ride, shirk, or otherwise act opportunistically".[75]

A common topic of dissent in international relations, which divides neoliberal institutionalism and classical realism, is the concept of relative and absolute gains. Neoliberal institutionalists believe that states focus more on absolute gains, while realists believe that states focus more on relative gains. Focusing on absolute gains, argue the former, foster the possibility for cooperation, while focusing on relative gains, argue the latter, inhibit that possibility. [76]

Neoliberalism argues that the aim of relative gains acts as an inhibitor for international cooperation. The theory believes, however, that institutions can help reduce this. By its definition, an institution, is a "persistent and connected sets of rules, often affiliated with

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[72] Krasner, S. D. (1982). Structural Causes and Regime Consequences: Regimes as Intervening Variables. *International Organization.* 36(2). P. 191

[73] Doyle, M. W. (1986). Liberalism and World Politics. The American Political Science Review, 80(4), p. 1160

[74] Moravcsik, A. (1997). Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization*, *51*(4), p. 517.

[75] Nemeth, S., McLaughlin Mitchell, S., Nyman, E., & Hensel, P. (2014). Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones, *40*(5), p. 718

[76] Powell, R. (1991). Absolute and Relative Gains in International Relations Theory. The American Political Science Review, 85(4), p. 1303.

organizations that operate across international boundaries".[77] They believe that institutions can positively impact strategies sought by states to achieve international security, nullifying the fear of relative gains, which in turn encourages cooperation. Proponents of this theory argue that international institutions, and their stability, will determine how important the consideration for relative gains is. The more stable the institution is, they contend, the less states would be worried about relative gains.[78]

To further the neoliberal argument, they also offer that states, being only concerned in their individual absolute gains, are indifferent to the gains of other states. As for cheating, they do agree with the realist standpoint that it is in inhibitor to cooperation. Cheating is suggested by the neoliberal institutionalism theory to be the most important inhibition of cooperation among "rationally egoistic state".[79] The theory argues, however, that international institutions help state bypass this fear of cheating, which in turn promotes cooperation. To quote Keohane, "in general, regimes make it more sensible to cooperate by lowering the likelihood of being double-crossed".[80]

1.2 Methodology

The qualitative case study method is the chosen approach to examine the role of the institutions, and to understand how they played a part in the evolution of the disputes. As described by Baxter and Jack (2008), it will enable a better understanding of the cases and their contextual conditions by using multiple data sources. Multiple information canals will be used to offer a better, multidimensional understanding of the disputes being studied. [81]

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[77] Haftendorn, H., Keohane, R., & Wallender, C. (1999). *Imperfect Unions: Security Institutions Over Time and Space* (1st ed.). Oxford: Oxford University Press. P. 1-2

[78] Hellmann, G., & Wolf, R. (1993). Neorealism, Neoliberal Institutionalism, and the Future of NATO. *Security Studies*, *3*(3), P. 8.

[79] Grieco, J. M. (1988). Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism. *International Organization*, *42*(3), P. 487

[80] Keohane, R. O. (2005). *After Hegemony: Cooperation and Discord in the World Political Economy* (1st ed.). New Jersey: Princeton University Press. P. 97

[81] Baxter, P., & Jack, S. (2008). *Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers*. The Qualitative Report, *13*(4), 544.

While the Arctic itself is not a new arena of interest, certain concepts of Arctic cooperation in an ever-changing climate setting are relatively new. The Arctic Environmental Protection Strategy (AEPS) is the precursor of the Arctic Council. It marked the beginning of international cooperation in the Arctic in that sphere as the states became aware of the climatic impact on the region. This Strategy has seen the light in 1991, less than 25 years ago. The Arctic Council dates from 1996, less than 20 years ago. Although there has been a longstanding interest in the Arctic, as the decade-old Barents Sea dispute between Norway and Russia shows, it's only recently that the attention that the Arctic has been getting lately has grown exponentially. One direct consequence for research on the matter is that there is a scarcity of certain types of documents. For example, in the case of the Arctic Council, Council Declarations are only made on a two-year basis. The United Nations Convention on the Law of the Sea (UNCLOS) itself, on the other hand, is less recent. It dates from 1982, and is also more universal. Thus it gives access to a larger scope of documents, studies and reports.

The emphasis will be on secondary data rather than primary data. It will be used in order to validate the plausibility of the hypothesis. The data used will focus on written and scholarly articles on the subject of the Arctic. However, it will not be limited to scientific papers. Other sources of data will be used to complement, such as the institutions' charters, think-tank articles, newspaper articles, maps, official reports from governmental agencies or from non-governmental organizations (NGO), and any other sources deemed necessary. The Arctic policies of the four Arctic coastal states concerned by the disputes under study (Canada, Norway, Russia and the United States) will also be duly considered.

1.2.1 Data Collection

There are two main chapters: one on institutions, and one on disputes. Each are divided into the two institutions and the three disputes. For both institutions the first step will be general data collection, and then there will be more specific information. The inclusion criteria for the general data will be on the history of both institutions and information pertaining to their

structure, organization and mandates. Following this, specific data will be gathered for both. For UNCLOS, the inclusion criteria will be data relating to both: (1) its dispute resolution dispositions; and (2) the UN Commission on the Limits of the Continental Shelf (CLCS). As for the Arctic Council, the inclusion criteria will be: (1) the agreements it has enabled its member states ratify; and (2) its limiting factors in terms of adapting into an institution with dispute resolution mechanisms. Four limiting factors and their impacts have been chosen: (1) environmental physical changes; (2) increased economic interest in the region; (3) the incorporation of observer states within the council; and (4) the disagreements as per its structure and mandates.

As for the disputes, the data of interest will be similar for them. In all cases, the first step will be gathering facts on their historical aspects in order to better understand the context. Different facets of the history of the disputes will be considered: (1) The events prior to the disputes; (2) the beginning of the disputes themselves; and (3) the progress made throughout the dispute's existence through negotiation and diplomacy, with a particular interest in the role of UNCLOS and the Arctic Council (for the Beaufort and Barents Sea Dispute). At this point, the data collection will differ between the disputes, given that two are resolved and the other is not. For the Barents Sea and the Gulf of Maine, information will be gathered about how the agreement was reached, which factors have aided in such resolution, as well as why it was reached. For the Beaufort Sea, the data will focus on the current state of the dispute, and potential future developments.

1.2.2 Data on Institutions

Once the data has been collected, the role of both institutions will be explored through it. This will differ from one to the other given the differing mandates and statuses of both institutions within the Arctic.

Starting with the Arctic Council, we will begin by exploring the institution. As stated by Samuel Barkin, the first step in researching and better understanding an international

organization is its institutional analysis.[82] It consists of "the formal structure, organization, and bureaucratic hierarchy of IOs"[83], with the charter as the starting point. In this case, an institutional analysis will not be conducted, but a similar approach will be used to better understand the Council.

Typically, as it is the case with the Arctic Council, the charter will specify key attributes of the institution. They are its structure, powers, decision-making processes and hierarchy. Furthermore, of particular interest will be both the agreements ratified with its assistance and the abovementioned limiting factors. The aim is to determine whether the Council has adapted itself from a regime with an environmental focus to one with a broader mandate that encompasses disputes. Doing so will permit to determine whether this institution will be considered when verifying the hypothesis.

As for UNCLOS, specific attention will be paid to its mechanisms and dispute resolution dispositions. The emphasis will be on both the dispute resolution provisions themselves and CLCS. Detailed study of the mechanisms at play will be made, including how they have the potential to influence the disputes. At this stage, there will be no attempt at validating the hypothesis. Rather, the interest will be in better understanding how the institution can play a role in dispute resolution. This understanding, ultimately, will be used to establish UNCLOS' efficiency in dispute resolution in the third chapter, by putting emphasis on the role and impact that its provisions have played as the disputes have unfurled over the years.

1.2.3 Data on Disputes

The information from institution will be used to better understand the chosen disputes. An emphasis will be put on how both institutions have aided in resolving the disputes, and their shortcomings. The data studied will be on the Barents and Beaufort Sea disputes, and the Gulf of Maine to act as a comparative example to the Beaufort Sea. The history of the disputes

[82] Barkin, S. J. (2006). *International Organization: Theories and Institutions* (1st ed.). New York: Palgrave MacMillan, p. 28)
[83] *Ibid.*

will be thoroughly researched and a particular interest will be on the role played by the institutions.

The disputes in the Arctic have important differences. A first are the nature of the Norwegian-Russian relations, in contrast to the American-Canadian relations. A second is the fact that the Americans have yet to ratify UNCLOS. However, there are also some important similarities, which explain the selection. Both areas are home to important deposits of oil. First in the case of the Barents Sea, Russia estimates that petroleum resources could be equivalent to either 39 billion barrels of oil or 6.6 trillion cubic meters of gas or a blend of the two.[84] As for the Beaufort Sea, it has been known as far back as the 1970s to contain hydrocarbons. Concretely, in 2006, a potential 250 million barrels were discovered by Devon Canada.[85] The second similarity is that both disputes have been ongoing for decades. Furthermore, the nature of the dispute is equally comparable; in both cases the dispute arises from a disagreement in which boundary delimitation line is used.[86]

The starting point will be a brief historical and context background research of the disputes. Following this, the focus will be on the extent to which the institutions have impacted the resolution of the Barents Sea and the Gulf of Maine disputes, or assisted in achieving progress in the Beaufort Sea dispute. To do so, a consistent approach for the disputes will be employed, by exploring (1) the issues as well as the claims and arguments of the involved parties; (2) the decision making process of the disputes including the role of the institutions, both direct and indirect; (3) the outcome of the resolution of the Barents Sea and the Gulf of Maine dispute and the current state of the second dispute. Finally, it will be determined whether the hypothesis is to be accepted or rejected. This decision will be based on the perceived role of the institutions. If the institutions had an influential and decisive role in the resolution of disputes, then the hypothesis will not be rejected.

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[84] Weafer, C. (2010, September). Race for the Arctic, and for FDI (+infographics). *Russia Beyond the Headlines*. Retrieved from http://rbth.com/articles/2010/09/15/race_for_arctic_and_fdi04945.html
[85] Baker, J., & Byers, M. (2012). Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute. *Ocean Development & International Law*, *43*(1), p. 71.
[86] *Ibid.*

Concretely, a three-step approach will be made. To begin, the will be classification and categorization of the data on the disputes. The two categories will be on their similarities and differences, and also on the role that the institutions had in the dispute's evolution. Next the relationship between both categories and the data obtained will be explored. The final step will be to determine whether the hypothesis is to be accepted or rejected.

In order to do so, we will be using certain criteria which have been explored in the theoretical framework. As we have previously explored, institutions can have positive impacts on states in different ways. Neoclassical realists argue that institutions, as shaper and promoter of ideas, can play a role in a state's foreign policy. As for neoliberal institutionalism, it argues that institutions can facilitate cooperation by reducing uncertainty and making mutually beneficial agreements, as well as aiding states in reaching compromises with mutual benefits and mutual gains.

The collected data will be converged rather than analyzed independently, in order to gain better insight in the chosen cases. This will give a clear, overall understanding of the role of the institutions in the cases. In turn, this will enable to determine if the institutions have facilitated the States in such ways in regards to the dispute. If they have fostered a dispute settlement-prone setting, the hypothesis will be accepted. If not, it will be rejected.

Chapter 2: INSTITUTIONS

This chapter of the thesis will lay the groundwork for the analysis. As a reminder, the aim is to determine whether the institutions present in the Arctic are sufficient in aiding dispute resolution and cooperation among states. According to both neoclassical realism and neoliberalism, institutions are of paramount importance when studying a dispute: Based on the neoclassical theory, there is a possibility that institutions, as shaper of ideas, will directly influence a state's foreign policy. On the other spectrum, based on neoliberalism arguments, institutions can facilitate cooperation among states by reducing uncertainty.

This chapter will analyze an example of a hard law and soft law institution. The intention is to analyze both institutions in order to determine their effectiveness (or lack-of) at promoting cooperation in the Arctic.

UNCLOS is considered a hard law institution since it legally binds the states that have ratified it. A hard law, defined by scholars Kenneth W. Abbott and Duncan Snidal, refers to the three following dimensions: (1) legally binding obligations; (2) such obligations are precise, or may be made precise through specific regulations; (3) they delegate authority to a third-party to interpret and implement the law.[87]

Soft law is by contrast significantly ambiguous. It can be seen as "softer" than hard law; a quasi-legal instrument that exists once a legal instrument is weakened along one of the three dimensions aforementioned. To become a soft law, the instrument can be softened in varying degrees across one or more of the dimensions.[88] The Arctic Council is a form of soft law institution, as its raison d'être is to act as a high-level forum promoting cooperation between its members. It does not issue legally binding obligations.

While Antarctica has a comprehensive and overarching legal framework,[89] the Arctic remains devoid of one. The five Arctic littoral states (Canada, Denmark, Norway, Russia and

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[87] Abbott, K. W., & Snidal, D. (2000). Hard and Soft Law in International Governance. *International Organization*, *54*(3), p. 421
[88] *Ibid*. P. 422
[89] The Scientific Committee on Antarctic Research. (2015). *Antarctic Treaty System*. Retrieved from http://www.scar.org/antarctic-treaty-system

the United States) met in May 2008 in Ilulissat, Denmark. In that meeting the five nations stated that since they consider UNCLOS able to provide a solid foundation to ensure responsible management, it was not deemed necessary to develop a comprehensive and overarching international legal regime to govern the Arctic Ocean.[90] The five states further pledged to actively seek to strengthen cooperation based on trust and transparence through mutual exchange of data and analyses.[91]

This pledge by the five Arctic littoral states is a paper example of government rationally seeking to work with an international institution, which was itself formed with the intention of facilitating cooperation between states. The case studies will serve to show how the institutions have achieved this objective of cooperation facilitation.

2.1 United Nations Convention on the Law of the Sea

> *"Navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and, a more unique feature, a binding procedure for settlement of disputes between States - these are among the important features of the treaty."*[92]

UNCLOS is an example of hard law, as it is a binding legal regime for countries that have ratified it. It forms the sole legal framework encompassing the region. While not unique to it, it plays a vital role in the region's international legal regime. By its nature as a binging legal regime, it becomes in itself an actor in the Arctic. It fosters order in the region by reducing uncertainty. By reducing uncertainty, UNCLOS reduces the anarchic nature of the region. Analyzing UNCLOS' role in the two disputes will permit to determine to what extent it has been capable of enabling cooperation between states, and if it has been capable of fostering mutually beneficial agreements in both cases.

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[90] The Ilulissat Declaration. (2008, May 28). P. 1
[91] *Ibid.* P. 2
[92] The United Nations Convention on the Law of the Sea (A historical perspective). (1998). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm

Rothwell argues that the law of the sea has been of paramount importance in developing the legal regime of the Arctic.[93] It is quite significant in four regards: (1) the protection of the environment (Part XII—Protection and Preservation of the Marine Environment); (2) the regulation of the territorial sea (Part II—Territorial Sea and Contiguous Zone); (3) in regulating commercial activity within the Exclusive Economic Zone (EEZ) (Part V—Exclusive Economic Zone); and (4) in regards to the continental shelf, including the extended continental shelf (Part VI—Continental Shelf). In essence, UNCLOS dictates through its provisions the area that a state has sovereignty or jurisdiction over.

As a whole, UNCLOS can be seen as the overarching legal system of the oceans. As the president of the third convention on the Law of the Sea has coined, it is the "Constitution for the Oceans"[94]. As described by the *Encyclopedia Britannica*, UNCLOS is concerned with "public order at sea".[95] Its scope ranges from internal waters to the high seas, including its resources, both in the water and under the seabed. It also includes provisions regarding settlement of disputes (part XV).

Part XV sets a requirement for states to attempt a peaceful settlement of their disputes. It enables three methods for dispute mediation, which are: (1) the UNCLOS' international arbitration; (2) the International Court of Justice; and (3) the International Tribunal for the Law of the Sea (ITLOS), which was created as a court "primarily for the adjudication and settlement of disputes relating to [UNCLOS]."[96] Generally, these dispute mediation methods have a marked potential of reducing the intensity of maritime disputes and preventing them from escalating.[97]

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93 Rothwell, D. (1996). The Polar Regions and the Development of International Law. Cambridge: Cambridge University Press. P. 261

94 Koh, T. T. B. (1982). A Constitution for the Oceans. *Third United Nations Conference on the Law of the Seas*.

95 Churchill, R. (2013, September). Law of the Sea. In *Encyclopedia Britannica*.

96 Shelton, D. (2009). Form, Function, and the Powers of international Courts. *Chicago Journal of International Law*, p. 9

97 *Ibid.*

2.1.1 A Brief History of UNCLOS

UNCLOS was signed on December 10th, 1982. It initially came into force in 1994 and was ratified by 60 countries. More than 150 countries had ratified it by the 21st century.[98] Before it was concluded in 1982, certain countries had already begun laying claims to their continental shelf. Such was the case of the United States. In 1945, the president Harry S. Truman extended the U.S. claim of natural resources of the sea bed contiguous to the coasts of the United States. This was done through proclamation 2667, known as the Truman Proclamation.[99] The United-States were the first country to unilaterally extend its jurisdiction over natural resources on the continental shelf.[100] This encouraged other countries to do the same. Argentina quickly followed in 1946, by claiming sovereignty over its shelf and the sea above it. Chile and Peru followed their example in 1947, and Ecuador in 1950. They claimed sovereignty over a 200-mile zone extending from their coast. An increasing amount of countries then made their own claims, such as Canada, Egypt, Ethiopia, Libya, Saudi Arabia, and Venezuela, among others.[101] As a direct consequence the need of an overarching framework arose, which would ultimately become UNCLOS.

The first conference held by the UN which would eventually lead to the creation of the first version of the law of the sea, UNCLOS I, was held in 1958. Four conventions were produced on (1) the high seas; (2) the territorial sea and the contiguous zone; (3) the continental shelf; and (4) fishing conservation of the living resources found in the high seas.[102] In multiple respects this convention was a breakthrough, as it was a step towards order, harmony and better management of ocean resources. UNCLOS I had succeeded in defining the territorial sea. However, it wasn't without its imperfections. For example, the breadth of the territorial sea had not been agreed upon, and neither were the fisheries limits.[103]

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[98] Churchill, R. (2013, September). Law of the Sea. In *Encyclopedia Britannica*.
[99] President Truman, H. S. 1945 Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf, Executive Order 9633 (1945).
[100] The United Nations Convention on the Law of the Sea (A historical perspective). (1998). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm
[101] *Ibid.*
[102] Hauksson, S. b. (n.d.). A Legally Binding Regime for the Arctic. *University of Akureyri.* P. 10.
[103] Convention on the Territorial Sea and the Contiguous Zone 1958. (1958, April 29). United Nations.

In 1960, there was a second UN conference on the Law of the Sea, UNCLOS II. The aim was to determine the status on the limit of territorial sea and fishery limits, which was lacking from the original version of UNCLOS. However, decisions on such statuses were deferred.[104]

In 1967, the UN ambassador of the Southern European island country Malta Arvid Pardo made a speech to the United Nations General Assembly. He appealed for an effective international and overarching legal regime for the world's waters. He spoke of the rivalry that existed in the oceans, of the increasing pollution of the seas, and of conflicting legal claims of the seabed potentially rich in resources, which undermined stability.[105] His speech set in motion an undertaking that ended in 1982 with the adoption of the 'constitution of the oceans', UNCLOS III, henceforth known as UNCLOS.

During the fifteen years between Pardo's speech and the adoption of UNCLOS, the UN representatives of more than 160 countries negotiated for the creation of the new convention. The resulting convention, was created on December 10, 1982, and is still in force today. It was at the time a record in legal history, as 119 countries signed the convention on the first day it was opened for signature.[106] The overwhelming number of countries that actively negotiated for the creation of UNCLOS is an example of the possibility of trust and cooperation between states and governments. In this case, more than 160 countries agreed upon the creation of an institution based on shared interests for order on the world's oceans.

It is important to note that as of yet, the United States have not signed the treaty, and therefore not ratified the treaty.[107]

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[104] UNCLOS II 1960. (2014, October 6). Law of the Sea and the UN Conventions. Retrieved from http://wcl.american.libguides.com/content.php?pid=455926&sid=4072006

[105] The United Nations Convention on the Law of the Sea (A historical perspective). (1998). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm

[106] Koh, T. T. B. (1982). A Constitution for the Oceans. *Third United Nations Conference on the Law of the Seas*.

[107] Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014. (2014). Oceans & Law of the Sea, United Nations.

2.2.2 Dividing the Oceans according to UNCLOS

One of the key outcomes of UNCLOS is that it brings a fundamental change to the concept of exclusive nature of territorial sovereignty. It created this shift by defining various overlapping spheres of rights and responsibilities.[108] The direct consequence of this shift is a reduction in uncertainty, as the states are given a strict framework—'persistent and connected sets of rules'—to work with when it comes to their waters.

The convention divides the Oceans according to specific baselines. The division starts with internal waters then moves to territorial waters, which extends to 12 nautical miles (nm) from the coastline. Afterwards, there is an additional 12 nm (leading to 24 nm from the coastline) called the Contiguous Zone. From the coastline extends a 200 nm Exclusive Economic Zone (EEZ). After this zone lies the high seas, which are freely open to all states, both coastal and land-locked. Article 87 indicates that this freedom comprises freedom of navigation, of overflight, to lay submarine cables and pipelines, to construct artificial islands, of fishing, and of scientific research.[109] In addition to the actual waters, states have exclusive rights on the resources of their continental shelf which equally extends to 200 nm. However, a state can make a claim to the UN Commission on the Limits of the Continental Shelf (CLCS) to extend it up to a maximum of 350 nm. The CLCS consists of 21 members, who are experts in fields of geology, geophysics or hydrography.[110]

UNCLOS also defines some keys aspects in terms of state responsibilities, such as the right of innocent passage. It is defined in Part II, article 18 as traversing the territorial sea without entering the internal waters or calling port. The passage must be continuous and expeditious, except in cases of emergency. According to UNCLOS, article 19, passage is considered innocent if it is not detrimental to the peace, order or security of the state.

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[108] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2013). Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims. *SAIS Review*, *33*(2), p. 23

[109] United Nations Convention on the Law of the Sea. (1998). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[110] Annex II Commissions on the Limits of the Continental Shelf. (1982, December). Oceans and Law of the Sea. Retrieved from http://www.un.org/depts/los/convention_agreements/texts/unclos/annex2.htm

First defined by UNCLOS (Part II, Article 8) are the internal waters, located within the state itself—on the land-side of the baseline. The state has full sovereignty over these waters, including in limiting the access of foreign vessels. Foreign vessels do not have the right of innocent passage within internal waters. There does exist an exception in determining the internal water which applies to archipelagic states, described in Part IV.

The second area defined by UNCLOS, equally in Part II, is the territorial sea. The sovereignty of a state extends to those waters, giving the state the right to set laws, regulate its use, and exploit the resources. This equally holds true for the air space over the territorial sea and for the seabed. Foreign vessels have the right of innocent passage within the territorial sea. This right is a key difference between the internal waters and the territorial sea.

The third area defined by UNCLOS, also in Part II, is the Contiguous Zone. In this portion of the waters, the state is entitled to exercise a certain level of control. This control is meant to ensure that the state's customs, fiscal, pollution, immigration and/or sanitary laws and regulations, both within its territory and its territorial sea, are not impinged on. If such is the case, still within the Contiguous Zone, the state has the right to punish such infringement.

The fourth area defined by UNCLOS in Part V is the EEZ. The EEZ, contrary to the continental shelf, cannot exceed 200 nm. This zone gives certain rights and jurisdictions to the state. The state has sovereign rights over resources, both living (i.e.: fishing) and non-living (i.e.: mining), in terms of exploration and exploitation. It also has sovereign rights in regards to conservation and management. This right over resources also includes the continental shelf within the EEZ. It equally includes other activities of economic nature, such as energy production from water, currents and wind. In terms of foreign vessels, they possess the same rights of free navigation as they have on the high seas, including overflight and submerged navigation. Other states have the right to lay submarine cables and pipelines within the EEZ, and have the right for any other internationally lawful uses of the EEZ, as is the case with the high seas. They do not, however, have access to the resources.

The last area defined by UNCLOS in part VI is the continental shelf. It can be divided into two sections; the continental shelf itself, and the (potential) extended continental shelf. As

defined by UNCLOS, the continental shelf includes both the seabed and the subsoil of the underwater area that extends beyond the territorial sea. It is the natural prolongation of a country's land, and can extend up to a distance of 200 nm from the baselines of the territorial sea.[111] As per paragraph six and eight of Article 76, a state can submit a claim to the CLCS to extend its continental shelf to up to 350 nm from the baseline. Such claim must be made on the basis of geographical representation based on scientific data.[112] The Commission is in charge of making recommendations in regards to establishing the outer limits of a state's continental shelf. Once the proposed limit has been agreed upon by the coastal state, it becomes final and binding.

The CLCS can be seen as potentially having a positive influence on states and their foreign policy by organizing the decision and negotiation mechanism when it comes to claiming an extension on the continental shelf. This commission is key to the Arctic, as ultimately, determining the outer limits of the extended continental shelf is the origin of disputes within the region.[113]

2.2.3 Dispute Settlement

As per the research question, the aim is to determine whether institutions are sufficient in maintaining the peace within the Arctic. This includes both UNCLOS and the Arctic Council. This section will give an important insight into the mechanisms of dispute settlement employed through UNCLOS. The aim is to better understand how this institution is able to influence its member states' foreign policy, by encouraging them to cooperate with one another by seeking compromises.

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[111] Part VI Continental Shelf. (1982, December). Oceans and Law of the Sea. Retrieved from http://www.un.org/depts/los/convention_agreements/texts/unclos/part6.htm

[112] *Ibid.*

[113] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2009). The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims. *Social Science Research Network*, (2), 43.

In case of disputes, there are existing provisions incorporated within UNCLOS. According to Article 280 of Part XV, Section 1, states are encouraged to resolve disputes through peaceful means of their own choosing. In case of failure to reach a consensus through negotiations, Article 284 encourages states to undergo conciliation in accordance to section 1 of Annex V.

If reaching a consensus or conciliation fails, there exists other options for settlement of disputes. These options are defined in Article 287, Section 2. The implicated parties of a dispute may decide to use any settlement method available. If the parties do not agree on the method, then more complex provisions will be used.[114] This means that if the method of choice of dispute resolution by the implicated parties has failed, four procedures can be chosen from as per UNCLOS. They are: (1) submitting the dispute to ITLOS; (2) adjudication by the ICJ; (3) submitting the case to international arbitration procedures in accordance to Annex VII; or (4) submitting the dispute to special arbitration tribunals that possess specific expertise for the dispute in question, in accordance to Annex VIII.[115] Article 296 states that decisions rendered by a court or tribunal in such matter are binding.

From these abovementioned provisions, it becomes clear that UNCLOS, as an institution, should help prevent the proliferation of disputes within the Arctic. It does so by either encouraging states to resolve them peacefully, or enforcing legally binding decisions. In theory, UNCLOS should help prevent the appearance of new maritime disputes. However, in their paper, Nemeth, McLaughlin Mitchel, Nyman and Hensel have found that having ratified UNCLOS has no systematic impact on whether negotiations to resolve ongoing maritime disputes will be successful.[116] The authors seem to support that the success of such negotiations depends entirely on the states themselves. While this holds true, by their nature institutions tend to encourage states to cooperate and act in mutually beneficial ways. As

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[114] Sohn, L. (1983). Peaceful Settlement of Disputes in Ocean Conflicts: Does UNCLOS III Point the Way? *Law and Contempory Problems*, *46*(2), p. 196

[115] The United Nations Convention on the Law of the Sea (A historical perspective). (1998). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm

[116] Nemeth, S., McLaughlin Mitchell, S., Nyman, E., & Hensel, P. (2014). Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones, *40*(5), p. 713

such, UNCLOS should be able to reduce the propensity of new disputes arising, and if one does arise, it should render its resolution more accessible and feasible.[117]

Notwithstanding these provisions, some argue that UNCLOS is inadequate to safeguard the fragile peace of the Arctic and more needs to be done[118]. As a response to the growing uncertainty of UNCLOS' ability to restrain the interests of states in order to maintain peace, the five Arctic littoral states have met in Greenland, Denmark, in 2008 to sign the Ilulissat Declaration. This declaration will be discussed in a subsequent section.

The disputes within the Arctic are of high stakes, especially when considering the USGS estimate. Realism would argue that this has the potential of leading to conflict since states will seek control over territory as a defensive mechanism, and in order to prevent other states from controlling it and having access to the territory's resources.[119] Equally, neoliberalism would recognize that the scarcity of resources in the region could be a factor that could worsen potential disputes.

The ability of UNCLOS' provisions in mediating disputes and having a positive influence on Arctic states to reach consensuses would be a direct translation of neoliberalism's triumph over neoclassical realism. It would serve as an indicator that despite the potential for dispute, institutions are sufficient in maintaining peace in the region. On the other hand, if conflict arises, it would indicate that despite their role as a shaper of ideas they are insufficient by themselves to have an effect on a state's foreign policy.

2.2.4 UNCLOS and CLCS in territorial and resource disputes

According to Annex II of UNCLOS, a state can lay claim to an extended continental shelf. It must submit its claim to the CLCS along its supporting data, proving that the area is

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[117] *Ibid.* P. 718

[118] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2013). Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims. *SAIS Review*, *33*(2), p. 39

[119] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2009). The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims. *Social Science Research Network*, (2), p. 9

geographically linked to its own continental shelf. That is, the state must prove that it's an extension of its continental shelf.[120] This mechanism serves to create order and predictability within the Arctic.

As for the CLCS itself, it is comprised of twenty-one members who are experts in differing fields such as geology, geophysics or hydrography. These members are elected by States Parties to the Convention from among their nationals. Care is put in order to ensure that there is equitable geographical representation within the commission.[121]

Once a state has agreed to establish its continental shelf limits based on the recommendations of the CLCS, the limits become final and binding, according to Article 76 (Part 6).[122] If applicable, the state must also negotiate over other claimants who are competing for the same extended continental shelf, as the outer limit of the extended continental shelf is only binding for the state in question, not the international community.

The continental shelf is additional territory beyond a state's land, giving them sovereign rights over the resources. This additional territory can be further extended up to 350 nm from the baseline, given certain criteria are respected. This equally grants the state full sovereignty over the resources on that seabed and subsoil. In the case of the Arctic, one of the resource of interest as outlined by the USGS study is petroleum. The region's disputes are territorial by nature, and the extension of the continental shelf is related to some of those disputes. This is the case, for example, of the sovereignty over part of the North Pole's seabed. Certain disputes within the Arctic will stem from just that: defining the extended limit of the continental shelf of the various states making their claim.[123]

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[120] Commission on the Limits of the Continental Shelf (CLCS) Purpose, functions and sessions. (2012). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/clcs_new/commission_purpose.htm

[121] Commission on the Limits of the Continental Shelf (CLCS) Members of the Commission. (2014). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/clcs_new/commission_members.htm

[122] Commission on the Limits of the Continental Shelf (CLCS) Purpose, functions and sessions. (2012). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/depts/los/clcs_new/commission_purpose.htm

[123] Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2013). Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims. *SAIS Review*, *33*(2), p. 25

A concrete example of claims over an extended continental shelf within the Arctic is in regards to the North Pole. The four littoral states who have ratified UNCLOS have claims that overlap each other, which in turn could become cause for tensions. This example makes it evident that UNCLOS, including CLCS, becomes essential for Arctic affairs. It is key to the Arctic as it is the institution that will enable these states to lay claim to the seabed territory revolving around the North Pole, and enable such claims to be processed in a rigorous and predictable manner. This will be made possible through the CLCS' mechanisms.

In order to lay claim to the seabed in the North Pole, the littoral member states of UNCLOS have been showing a marked attention to the Lomonosov Ridge. This ridge divides the Arctic Ocean and stretches between Russia's Siberia and Canada's Ellesmere Island.[124] The ridge, with its extension being underneath the North Pole, is the gateway to that region. Currently, all four littoral countries that ratified UNCLOS—Canada, Denmark, Norway and Russia—have submitted claims to the CLCS for the Lomonosov Ridge, which in turns grants access to the North Pole."[125]

From the North Pole example, a first sign of UNCLOS' efficiency in regulating disputes about territorial claims in the Arctic can be inferred. By respecting the mechanisms set forth by UNCLOS through the CLCS, states have showed that they are willing to abide by the institution's mechanisms within the Arctic. In itself, it is a sign that the ideology of order and cooperation is present within the Arctic, and that states are willing to cooperate with one another and with the international regime in place within the region.

There is however an important distinction between willingness to respect an institution's provisions, and doing so. This willingness cannot immediately be translated into success, and must be further analyzed. Ultimately, the institution must be able to enforce its own provisions, and ensure that the states respect them. The North Pole example does give an insight of UNCLOS' efficiency in creating behavioral norms for the states to respect; all four

[124] Gunitskiy, V. (2008). On Thin Ice: Water Rights and Resource Disputes in the Arctic Ocean. *Journal of International Affairs*, *61*(2), p. 262.
[125] *Ibid.*

littoral states who ratified UNCLOS have submitted claims to the CLCS. While these claims are contentious to one another, they do show their commitment to the institution.

The North Pole currently does not give further information since the process is still ongoing. While it does illustrate an important first step, which is the states' willingness to adhere to its mechanisms, it does not permit to fully verify the hypothesis. That is why one of the case study is on a dispute that has been resolved. With the Barents Sea case study, the CLCS' role will become apparent in resolving the decades-old dispute.

2.2.5 Ilulissat Declaration

The Ilulissat Declaration was adopted in May 2008 in the Arctic Ocean Conference held in Greenland, Denmark. It was adopted by the five Arctic littoral states, coined the Arctic Five. The intention was to address the implications of an Arctic becoming increasingly accessible, and to pledge the states' commitment to resolve disputes peacefully. It further served to remind the international community that the five Arctic coastal states do not require to commit to a new comprehensive and overarching legal regime for the Arctic, as it is the case for the Antarctic. Through the declaration they affirmed to be fully committed to UNCLOS' legal framework and to peacefully settle any overlapping claims.[126] The states also pledged to work hand-in-hand with the International Maritime Organization (IMO) in order to either strengthen current measures or develop new ones in regards to maritime safety and prevention.[127] This pledge illustrates well Keohane's argument that despite what is posited by realism, states can exhibit a clear desire to cooperate. While this pledge remains to be tested in some instances, in others it shows to have held true.

Certain events and perceptions led to the Ilulissat Declaration, showing the increased importance of UNCLOS in regulating Arctic affairs. Prior to the Ilulissat declaration, there was a perceived lack of governance in the Arctic. According to certain commentators,

[126] The Ilulissat Declaration. (2008, May 28)
[127] *Ibid*. P. 2

including scholars and policy-makers, it found itself in a "legal void".[128] It was believed that this would inevitably lead to a scramble for territory, resources and geographic position[129]. The 2007 planting of the Russian has not helped in this perception. This led to further speculations about the fragility of the Arctic status quo, namely in regards to territorial disputes.[130] This act has been further aggravated by Chilingragov's declaration of Arctic ownership.[131]

These factors encouraged a growing global interest in the Arctic. They also fueled a desire for some, such as the European parliament and certain scholars, to develop an overarching legal framework analogous to the Antarctic Treaty.[132] UNCLOS as an institution was seen by some as insufficient in resolving or regulating overlapping claims within the Arctic, both existing and potential[133].

An argument justifying an overarching legal treaty is that states can opt out of binding dispute resolution provisions that can arise under UNCLOS, according to Article 298.[134] Holmes argues in his 2008 paper that the ideal method to avoid disputes and facilitate cooperation would be through a multilateral overarching Arctic treaty, similar to that of Antarctica.[135] Another author argues that Antarctica and the Arctic share important similarities, and a

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128 Dodds, K. (2014). Squaring the Circle: The Arctic States, "Law of the Sea," and the Arctic Ocean. Eurasia Border Review, 5(1), p. 118.

129 Carlson, J. D., Hubach, C., Long, J., Minteer, K., & Young, S. (2013). Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims. *SAIS Review*, *33*(2), p. 39;
Borgerson, S. (2008). Arctic Meltdown The Economic and Security Implications of Global Warming. *Foreign Affairs*, (March/April Issue); Dodds, K. (2014). Squaring the Circle: The Arctic States, "Law of the Sea," and the Arctic Ocean. Eurasia Border Review, 5(1), p. 113.

130 Carpenter, B. (2009). Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and how an Arctic Treaty Might Stop a New Cold War. *Environmental Law*, *39*(215), P. 239

131 Cited in Howard, R. (2009). *The Arctic Gold Rush* (1st ed.). England: Continnum. P. 2

132 European Parliament. (2008). European Parliament resolution of 9 October 2008 on Arctic governance. Brussels.;
Struzik, E. (2010, June). As the Far North Melts, Calls Grow for Arctic Treaty. *Yale Environment 360*. Retrieved from http://e360.yale.edu/feature/as_the_far_north_melts_calls_grow_for_arctic_treaty/2281/;
Rothwell, D. R. (2008). The Arctic in International Affairs: Time for a New Regime? *The Australian National University*, *8*(37), p. 8.;
Dodds, K. (2014). Squaring the Circle: The Arctic States, "Law of the Sea," and the Arctic Ocean. Eurasia Border Review, 5(1), p. 118.

133 Holmes, S. (2008). Breaking the Ice: Emerging Legal Issues in Arctic Sovereignty. *Chicago Journal of International Law*, *9*(1), p. 325

134 *Ibid.* P. 339

135 *Ibid.* P. 351

similar treaty would be feasible. The author does acknowledge that there are differences between both regions, yet they are not sufficient to prevent a similar treaty from being effective within the Arctic.[136]

On the other spectrum of the debate are those who believe that a treaty is either non-applicable, or not necessary. It is as a response to the growing concerns from the international community that the five coastal states met, in order to sign the Ilulissat Declaration. The goal of the declaration was to unequivocally reject the idea that some held of the Arctic—that is, a scramble for territory and resources.[137] The Declaration serves as a method to keep the growing international community's interest in the Arctic at bay, by "marginaliz[ing] alternative governance proposals, such as the Arctic Treaty"[138]. This leads to an expectation of a certain level of commitment from these countries, as the Declaration also rejects the concept that the Arctic will be the theater of a scrambled race for its resources and overlapping territorial claims. Quite the opposite, it adds emphasis to the state's sovereignty, define by UNCLOS' provisions. The Ilulissat declaration serves as a reminder and a reassurance that the five Arctic coastal states are committed to a law-abiding and disciplined administration of the Arctic Ocean. It emphasizes the provisions found in UNCLOS, thus keeping at bay the desires for an internationalization of the Arctic.

Despite this pledge for cooperation, possibility for dispute is not impossible. There remains some who believe that UNCLOS is insufficient and inappropriate as a legal framework for the Arctic Oceans.[139] An argument that can be summarized by the two theoretical frameworks at study in this paper. On one hand is the neoclassical realism point of view of the institutions in their current form. Despite their role as shaper of ideas and the influence they can have on a state's foreign policy, they are insufficient to prevent disputes from stemming from the interactions of power-seeking international actors. On the other hand,

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[136] Carpenter, B. (2009). Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and how an Arctic Treaty Might Stop a New Cold War. *Environmental Law*, *39*(215), P. 250

[137] Dodds, K. (2014). Squaring the Circle: The Arctic States, "Law of the Sea," and the Arctic Ocean. Eurasia Border Review, 5(1), P. 113.

[138] *Ibid.* P. 84

[139] Rothwell, D. R. (2008). The Arctic in International Affairs: Time for a New Regime? *The Australian National University*, *8*(37), p. 8.

there is the institutional liberalism point of view that the institutions operating in the Arctic are sufficient to maintain the peace, and that no further are needed.

2.2.6 UNCLOS as a Hard Law Institution

Within the Arctic, UNCLOS plays an important regulating role and offers key options for dispute settlement, which are the current reality of Arctic affairs. In presenting an agreed framework for dispute settlements and for determining the breadth of the extended continental shelf, UNCLOS helps reduce uncertainty between the Arctic states. It puts emphasis on a certain level of cooperation through Article 280, which encourages states to resolve their disputes peacefully through the method of their choosing. This same cooperation can further be enhanced by the reduced uncertainty brought forth by UNCLOS' provisions, as it creates behavioral norms for states to follow. Furthermore, if all states follow UNCLOS and the CLCS' provisions, it reduces the fear of cheating, and the states' incentive to cheat as a defensive mechanism.

The North Pole serves as a testimony of UNCLOS' early efficiency in regards to the territorial claims of the Lomonosov Ridge by serving as the proper first step. While this example is not enough to determine the validity of the hypothesis, it remains an important insight on UNCLOS' potential, and serves as an incentive for further validate its role in the midst of the case studies.

2.2 Arctic Council

An on-going constant of the debate on the Arctic's future is the polar ice melts coupled with technological advances, which create an increasing number of opportunities for Arctic transport and resource exploitation.[140] These opportunities are found both offshore and inland.

[140] Dodds, K. (2012). Chapter 1: Anticipating the Arctic and the Arctic Council: Pre-emption, precaution and preparedness. *University of London*, 28.

The Arctic Council has member states, permanent participants and observers. Observers can be non-Arctic states, inter-governmental and inter-parliamentary organizations, and non-governmental organizations (NGOs). The amount of observing states on the Arctic Council is a testimony of the region's prominence in international affairs, and that it is a matter of international interest. In 2013, China, among other countries—Japan, Republic of Korea, Singapore, India and Italy—was granted observer status. The EU's status has not been granted as of yet, but is still on the table. To cite Rottem, "the Arctic is popular!"[141]

Despite this flux in interest, development must remain sustainable to protect the fragile ecosystem of the Arctic. Cooperation between states is equally of paramount importance. These are two of the roles of the Arctic Council. Additionally, it is responsible for making policy recommendations in regards to the Arctic.[142] Beyond being a forum for cooperation, through its working groups it is also producing a vast array of knowledge vital to policy-makers in rendering their decisions. It is an example of a shaper of ideas; through its mandate and working groups, its intention is to influence the foreign policy of states towards a more sustainable attitude. It is meant to coordinate and facilitate state actions towards environmental sustainability.

The Arctic Council can be seen as a decision-shaping forum, rather than a decision maker. This is explained by its current nature, which is of making non-binding decisions.[143] It is a soft law institution, contrary to UNCLOS. Its aim is not to replace UNCLOS as the regulating body of the Arctic. Rather, it is meant to complement it and assist states. The UN Convention, as it has been previously explored, is the main regulating body in terms of potential contentious territorial claims. On the other hand, the Arctic Council aids cooperation in-between the Arctic states.

The Council is an eight-member forum; five of the members are the Arctic littoral states—Canada, Denmark, Russia, Sweden and the United States—and the other three members are

141 Rottem, S. V. (2014). A Note on the Arctic Council Agreements. Ocean Development & International Law, 46(1), p. 50.
142 Growing importance of the Arctic Council. (2013). *Strategic Comments*, *19*(16), 2.
143 Axworthy, T. S., Koivurova, T., & Hasanat, W. (2012). *The Arctic Council: Its Place in the Future of Arctic Governance* (p. 305). Munk School of Global Affairs. p. 286

Finland, Iceland and Norway. In addition there are permanent participants, who have full consultation rights in regards to negotiations and decisions. These participants are the indigenous people's organizations, Aleut International Assossiation, Arctic Athabaskan Council, Gwich'in Council International, Inuit Circumpolar Council, Russian Association of Indigenous People of the North (RAIPON) and Saami Council.[144] There are also observers to the Arctic Council. Observers have no decisional rights, as it remains the prerogative of the member states. However, they can make contributions and propose various projects. Currently, as observers, there are twelve non-Arctic states, nine inter-governmental and inter-parliamentary organizations, and eleven NGOs.

All of the Arctic Council's activities are conducted through six working groups. These groups are composed of representatives from sectorial ministries, government agencies, and researchers. The six groups cover a broad array of subjects: Arctic Contaminants Action Program (ACAP), Arctic Monitoring and Assessment Program (AMAP), Conservation of Arctic Fauna and Flora (CAFF), Emergency Prevention, Preparedness and Response (EPPR), Protection of the Arctic Marine Environment (PAME), and Sustainable Development Working Group (SDWG).[145]

There are procedural rules in regards to the meetings, and also of the various subsidiary bodies of the council.[146] Among these rules, it is stipulated that all decisions of either the Arctic Council or its subsidiary bodies must be made by consensus of all eight Arctic states. To reach consensus and render decisions, the Arctic Council operates at three distinct levels: (1) at the ministerial level, with meetings biennially (unless agreed otherwise); (2) at the Senior Arctic Officials (SAO) level, with meetings at least twice a year; and (3) at the working group's level.[147]

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[144] Permanent Participants. (2011). Arctic Council. Retrieved from http://www.arctic-council.org/index.php/en/about-us/permanent-participants/123-resources/about/permanent-participants

[145] Working Groups. (2011). Arctic Council. Retrieved from http://www.arctic-council.org/index.php/en/about-us/working-groups

[146] Arctic Council. (2013). *Revised Arctic Council Rules of Procedure*. Kiruna, Sweden. P. 44

[147] Ibid.

The ministerial level is in charge of the orientation the Council will take, and is central to the Council's affairs. [148] In turn, each Arctic state designates a SAO. As part of their mandates, they discuss reports from the working groups, task forces and other bodies of the council. They are equally in charge of coordinating, guiding and monitoring the activities of the Council, as per what has been agreed by the ministerial level. As for the research groups, they are in charge of technical and research work, covering a vast array of subjects.

By its nature, the Arctic Council is a key collaborative forum in regards to Arctic matters. It is seen as such by the eight Arctic states, including the five Arctic littoral states, which can be found in their Arctic strategy documents.[149] However, the Declaration of the Arctic Council is clear that the Arctic Council "should not deal with matters related to military security".[150] This can be seen by some as a limitation to the scope of the institution.[151]

Due to its nature as a soft law institution, its efficiency is brought in question by certain commentators[152]. As it was the case with UNCLOS, the aim is to elucidate the efficiency of the Arctic Council in promoting cooperation within the Arctic. To assess its efficiency, its history, past effectiveness, and adaptability will be studied.

2.2.1 History of the Arctic Council

The foundations for the Arctic Council were laid in the 1980s, when awareness began on the environmental problems and military tensions of the Arctic region.[153] Mikhail Gorbachev, in the Murmansk Speech of 1987, put in motion the turning point of Arctic Affairs by shifting the atmosphere of the Arctic from one of confrontation to one of co-operation. This shift translated to an important geopolitical change that would lead to both stability and peace

[148] Ibid.
[149] Rottem, S. V. (2014). A Note on the Arctic Council Agreements. Ocean Development & International Law, 46(1), p. 52
[150] Pedersen, T. (2012). Debates over the Role of the Arctic Council. *Ocean Development & International Law*, *43*(2), p. 148
[151] Keil, K. (2014). A New Model for International Cooperation. *The Arctic Institute*.
[152] *Ibid.*
[153] Pedersen, T. (2012). Debates over the Role of the Arctic Council. *Ocean Development & International Law*, *43*(2), p. 147

within the region.[154] In 1989, Finland appealed to the Arctic states to work in union towards the protection of the environment. This gave birth to the Rovaniemi Process, where the Arctic states were to meet regularly to discuss environmental matters. The Process was the beginning of the Arctic Environmental Protection Strategy (AEPS), the predecessor of the Arctic Council itself. This process began, in essence, based on shared interests from the various Arctic states. That is, on the desire to shift from the current Arctic state to a peaceful region, and to promote environmental sustainability.

The Arctic Council saw its birth as a continuation of its forerunner, the AEPS. The AEPS, like the now-Arctic Council, was a non-binding body which brought together the eight Arctic states. It also included the "Inuit Circumpolar Council, the Nordic Saami Council, the Union of Soviet Socialists Republics (USSR) Association of Small Peoples of the North, the Federal Republic of Germany, Poland, the United Kingdom, the UN Economic Commission for Europe, the UN Environment Program and the International Arctic Science Committee."[155] Working groups were created to assist the AEPS in its mandates. These groups are still active today under the Arctic Council's umbrella; the Arctic Monitoring and Assessment Programme (AMAP), and the working groups on Protection of the Arctic Marine Environment (PAME), Emergency Prevention, Preparedness and Response (EPPR), and Conservation of Arctic Flora and Fauna (CAFF).[156]

The Arctic Council itself was established in 1996. It was a result of the Ottawa Declaration, which recognized the Arctic Council as a high-level intergovernmental forum.[157] Over the following two years, AEPS was merged into it, and the Arctic Council's mandate broadened. In addition to the AEPS pollution orientation, its original mission became to promote cooperation, coordination and interaction amongst the eight Arctic states. Concurrently, it

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[154] *Ibid*.
[155] Axworthy, T. S., Koivurova, T., & Hasanat, W. (2012). *The Arctic Council: Its Place in the Future of Arctic Governance* (p. 305). Munk School of Global Affairs. p. 46
[156] *Ibid.* P. 47
[157] *Ibid.*

involved the Arctic indigenous communities, particularly in terms of sustainable development and environmental issues.[158]

Once the Arctic Council was created, its rules and procedures were made official in September 1998, and later revised in May 2013. In the past, it has had three shaping debates about its nature. These were centered on its role in the Arctic, and in regards to its future. The first was prior to its creation in 1996, the second was in the midst of the Ilulissat declaration of 2008, and the third was as a result of the political shift of the United States, in 2009.

The first debate was concerning its role, before its creation. The United States desired to limit the Arctic Council's jurisdiction to that of environmental issues. America desired for it to be devoid of formal competence, and wanted it to be solely a forum where environmental issues would be discussed.[159] Thus, as per the United States' desire the Arctic Council would be bereft of a legal personality, with no mandate over security issues.

The second debate took place after the smaller *de facto* forum of the five Arctic littoral states came to existence in 2008, following the Ilulissat Declaration. This led to discussions regarding the role of the new-found Arctic Five forum, versus the role of the already existing Arctic Council. One important reason for this debate was that the Arctic Five could discuss political issues that the Arctic Council could not due to its limiting mandate.[160]

The third debate took place in 2009, after the United States had a political shift in regards to both the roles of the Arctic Five and the Arctic Council. The United States critiqued the newly formed Arctic Five, favoring the Arctic Council. Canada favored the Arctic Five, and Russia acted as a middle-man.[161]

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[158] Establishment of the Arctic Council. (2011). Arctic Council. Retrieved from http://www.arctic-council.org/index.php/en/about-us/arctic-council/history
[159] Pedersen, T. (2012). Debates over the Role of the Arctic Council. *Ocean Development & International Law*, *43*(2), p. 149
[160] *Ibid.* P. 153
[161] *Ibid*.

2.2.2 Agreements

The Arctic Council is cited by some as the primary international forum in the Arctic in terms of importance.[162] In light of its appellation, a forum intended to facilitate negotiation and communication, it has in the past aided in concluding two international agreements which are both legally binding[163]. The Arctic Council has therefore fostered cooperation between states to facilitate negotiations until those two agreements were reached.

The first was in 2011, the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (SAR). The second, in 2013, is the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. These two agreements illustrate quite well the ability of the Arctic states of working together.

One key aspect of the former is found in article 3, which states that search and rescue regions are delimited without being related or acting as prejudice to boundaries between states, sovereignty or jurisdiction.[164] In this case, UNCLOS retains its priority over the agreement. As for the latter, a similar provision is found on article 16. It states that "[n]othing in this Agreement shall be construed as altering the rights or obligations of any Party under other relevant international agreements or customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea."[165]

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[162] Rottem, S. V. (2014). A Note on the Arctic Council Agreements. *Ocean Development & International Law*, *46*(1), p. 50

[163] Agreements. (2015). Retrieved from http://www.arctic-council.org/index.php/en/our-work/agreements

[164] Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic. (2011). Arctic Council. Retrieved from http://www.ifrc.org/docs/idrl/N813EN.pdf

[165] Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. (2013). Arctic Council. Retrieved from http://www.thearcticcouncil.com/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1792:agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic-signed-version-with-appendix

2.2.3 The Arctic Council's Role

There are varying views in regards to the role of the Arctic Council's role in the Arctic Ocean. Some arguments give it little to no importance since it is a non-binding forum. Other arguments maintain that despite this limitation it plays an important part in Arctic affairs.[166]

The Arctic Council was not established based on a treaty, making it devoid of a legal personality. Since it does not have a legal personality, it cannot legally bind its members through provisions, nor can it adopt legally binding decisions.[167] The reason for this limitation is the desire of the United States to restrain the mandate of the Arctic Council and its influence, making it able only to deal with matters related to the environment and sustainable development. They had equally desired the Council to be without a legal personality.[168] The Council is therefore limited to a facilitator in the creation of agreements in the environmental and human development sphere. It is, as seen through the lens of neoclassical liberalism, a shaper of ideas. Its role is to influence the foreign policy of Arctic states through the influence of the various working groups comprised of experts in their fields.

The 2008 Ilulissat Declaration had an impact on the perception of UNCLOS in the Arctic. It equally had an impact on the perception of the Arctic Council. Following the declaration, it became a matter of the Arctic five, rather than the eight Arctic states. The new Arctic Five was more tailored to specific matters that were not, at the time, addressed in the Arctic Council due to its limited mandate.

A potential positive shift in attitude for the Arctic Council, at the expense of the growing interest of the Arctic Five, can be inferred from a 2011 event. It was the first time where a U.S. secretary of state attended the Arctic Council Ministerial Meeting, praising it as a preeminent forum aiding international cooperation of the Arctic.[169] In Nuuk, in 2011, the

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[166] Pedersen, T. (2012). Debates over the Role of the Arctic Council. *Ocean Development & International Law*, *43*(2), p. 146
[167] *Ibid.,* p. 148
[168] *Ibid.*
[169] *Ibid.*

foreign ministers agreed to strengthen the Council's ability to respond to Arctic challenges and capitalize on Arctic opportunities by established a standing Arctic Council secretariat.[170]

Over the last seventeen years following the creation of the Arctic Council, there have been growing in interest in the Council both from Arctic states and from the international community. This increased interest is illustrated by the larger number of observers, whichis now at 32. This includes 12 countries. As for the Arctic states, there was an agreement at the ministerial level on a vision for the Arctic for the next 16 years. Council members made a pledge to strive for peace and stability according to international law.[171] In addition, the latest ministerial meeting attracted all foreign ministers, except Canada's. This included United States' Secretary of State John Kerry and Russian' Foreign Minister Sergey Lavrov.

A concrete outcome of this meeting was the signature of the legally binding agreement on the prevention and response on oil-spill. Furthermore, the Kiruna Declaration was signed. This declaration intends to improve economic and social conditions of the Arctic, as well as controlling the negative outcomes of global warming, safeguarding the environment and strengthening the Arctic Council's role in the Arctic.[172]

The founding declaration describes the Arctic Council as a high forum with the intention of promoting cooperation, coordination and interaction between Arctic states. Over the years it has become a prominent institution in Arctic Affairs.[173] Notably, it has been contributing considerably to the generation of knowledge, increased awareness to the concerns of Arctic's indigenous peoples, and favored international cooperation through the two binding agreements that were signed.

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[170] *Ibid., p*. 152
[171] Growing importance of the Arctic Council. (2013). *Strategic Comments*, *19*(16), 2.
[172] *Ibid.*
[173] Kankaanpää, P., & Young, O. R. (2012). The Effectiveness of the Arctic Council. *Polar Research*, *31*, p. 1

2.2.4 Adapting the Arctic Council to the new reality

While the Arctic Council has been effective in its environmental and sustainable development mandates, it does have limitations. These limitations are mainly caused by its nature as a soft law institution. As a soft law institution it is unable to enact binding decisions. It is equally limited by its mandate, being a regime focused on environmental and sustainable issues. By design it currently cannot actively contribute towards dispute resolution, contrary to UNCLOS. It cannot enforce currently existing treaties in the Arctic, nor can it create new ones. Currently, it acts solely as a consulting and cooperative institution, and offers knowledge through research groups. Being a body that does intensive scientific research, it can successfully leverage its knowledge and influence foreign policy. Despite this, it cannot enforce new or existing regulations. Rather, it can only make recommendations, which can be adopted by the Arctic countries based solely on their prerogative.

Important questions arise from these limitations. If the Arctic Council does not have a dispute resolution mandate, how can it assist with future dispute resolution? Is it efficient as an Arctic institution in resolving on-going disputes within the region? Is it able to prevent new ones from arising?

Currently, it would seem that it is not, due to its limiting mandate and structure. In order to play such a role, it must be able to adapt itself. The Arctic Council needs to shift its mandate from environmental and sustainability issues towards a more pragmatic role. Kankaanpää and Young, in their paper, have analyzed the data obtained through a questionnaire circulated to individuals who participated in the work of the Arctic Council. One of their key conclusion is that the Council, in order to maximize its effectiveness, needs to make fundamental adjustments in its core structure and its procedures.[174] The authors also found that it should focus both on internal factors and external issues in order to expand the breadth of the Arctic Council's mandate.[175]

[174] Kankaanpää, P., & Young, O. R. (2012). The Effectiveness of the Arctic Council. *Polar Research*, *31*, p. 13
[175] *Ibid.*

The next question to explore is whether the Arctic Council has been able to do just that, to adapt its nature and evolve in respect to the changing situation in the Arctic. If it finds itself unable to adapt, then it can be concluded that it will remain inefficient at resolving disputes within the Arctic. There are currently four difficulties that the Arctic Council is facing, which can impede its ability to adapt.

First, the Arctic is currently undergoing fundamental physical changes due to climate change and global warming. This has translated in sea-ice extent and volume reductions. It is a rapidly accelerating process. The Arctic is impacted more severely by higher temperatures than anywhere else on the planet. The air temperature is currently rising at more than twice the rate of global air temperatures due to Arctic amplification.[176] This change has led to increased interest in the Arctic region, namely of an economic nature, which is the second difficulty**.** This has translated itself in the desire of actors outside of the region to be incorporated to the institution. For example, in 2013, six new countries obtained the status of Observer States: China, India, Italy, Japan, Singapore and South Korea. Observer states cannot actively participate in the Arctic Council. They can, however, take part in debates and scientific findings. This participation can give them unofficial and indirect influence. Third, the incorporation of new observer states can render decision-making within the council more difficult. Each observer state have potentially diverging interests and visions of the Arctic Council's role, and can exert influence and pressure on the member states. The fourth difficulty has existed since the birth of the Arctic Council, notwithstanding the new observers to the Arctic Council. Historically there have been disagreements between the members of the regime, beginning with its mandate when it was first formed.

Considering all these abovementioned factors, how has the Arctic Council managed to keep track and to adapt itself? Environmental-wise, it has been active with the creation of important reports in regards to the situation of the Arctic. An example is the Arctic Climate Impact Assessment of 2004 made possible through a collaboration with the Arctic

[176] Rising air and sea temperatures continue to trigger changes in the Arctic: Arctic is warming at twice the rate of anywhere else on Earth. (2014). *National Oceanic and Atmospheric Administration*. United States. Retrieved from http://www.noaanews.noaa.gov/stories2014/20141217_arctic_report_card_2014.html

Monitoring and Assessment Programme (AMAP) workgroup and the International Arctic Science Committee (IASC). Another example is the Arctic Marine Shipping Assessment of 2009, an in-depth report written by the Protection of the Arctic Marine Environment (PAME) workgroup. In terms of scientific research, the Arctic Council has remained current with the changing environmental condition of the region. Despite its soft-law status, the Arctic Council has equally managed to keep up-to-date remarkably well with the changing reality of the region through the two previously mentioned agreements voluntarily ratified by member states. With its reports, it contributed to bring international attention to the dangers of climate change within the Arctic and the importance of safeguarding its ecosystem. In this sphere, the Arctic Council shows that it has been capable of adapting itself to the new reality of the environment.

While the Arctic attracts a greater range of players from the international community due to its richness in natural resources, the Arctic Council's mandate remains limited. It has no jurisdiction on broad economic and political aspects. In order to adapt to this increasing interest in the region, it needs to develop a mandate in those two spheres. In this respect, all that the Arctic Council may currently offer is to draw the attention on potential environmental impacts of large-scale developmental projects. However, it has no real say in its orientation. Even the agreements it helped foster became legally binding solely at the prerogative of the states that ratified them. In the economic and political sphere, the Arctic Council has not adapted itself. Rather, it is still the individual states that are the actors at play. It is interesting to note that a potential first step in this direction has been taken with Canada's Arctic Council Chairmanship of 2013-2015. The emphasis is put on the development for the people of the North. Canada's chairmanship desires to prioritize the interests of Northerners, with an emphasis on "responsible Arctic resource development, safe Arctic shipping and sustainable circumpolar communities."[177] Interest is put in the economic and resource development, with the establishment of a forum, the Arctic Economic Council. This forum aims to encourage circumpolar economic development and foster a business environment to enable local

[177] Canada's Arctic Council Chairmanship. (2013). Government of Canada. Retrieved from http://www.international.gc.ca/arctic-arctique/assets/pdfs/Canada_Chairmanship-ENG.pdf

businesses to engage with the Arctic Council.[178] However, this interest seems to be limited to facilitate the economic development of indigenous business. It is not focusing on an international scale nor on large-scale investments.

Observers do not have full participation rights in the Arctic Council. Their inclusion is a clear signal of the increasing interest in the Arctic, due to the potential economic gain from natural resource exploitation and shipping. Adding new observer countries in its rank gives the Arctic Council more credibility. It does, however, have negative impacts on its cohesion. The inclusion of new states can have a negative outcome on the governance of the Arctic Council, as some member states might oppose such additions. For example, there is resistance in the EU's desire to join the Arctic Council as an observer state from both Russia and Canada.[179]

The increasing number of countries obtaining the observer status could possibly impede the Council's decision-making ability. Based solely on its history and debates about its structure and mandates, it can be noted that the Arctic Council has had important disagreements. There have also been foreign policy shifts from its member states. Since its inception in 1996, the Arctic Council has had important conflicts and debates in regards to its role. This is as an indication of its uncertain future. As of today it remains uncertain. Its role is under debate from its member states, due to disagreements as to how the Arctic Council's structure should be modified—or if it should be modified—and what new role, if any, it should be given. Furthermore, there is also the matter of the rising importance of the Arctic Five. Therefore, based on the disagreements, the Arctic Council has equally not managed to adapt itself. This makes its future rather uncertain.

2.2.5 The Arctic Council as a Soft Law Institution

With its current structure, it seems an out of reach goal for the Arctic Council to adapt itself to the ever-changing reality of the Arctic. Due to its inability to adapt itself, it equally seems

[178] *Ibid.*
[179] Depledge, D. (2015). The EU and the Arctic Council. *European Council on Foreign Relations*. Retrieved from http://www.ecfr.eu/article/commentary_the_eu_and_the_arctic_council3005#

impossible for the Arctic Council to evolve towards an institution able to deal with disputes. As long as it does not adapt itself and evolve to reflect the new reality of the Arctic, it will remain inefficient in dispute resolution. It is, however, effective in its own spheres of influence, even today. Despite this, it is difficult to see this institution shift towards a dispute-oriented mandate.

The Canadian chairmanship of 2013-2015 desired to strengthen the Arctic Council. Canada stated that it collaborating with the various partners of the Arctic Council with the intention of strengthen it and broadening its influence within the region. The objective in this is to grant a greater importance to Permanent Participant organizations, as well as maximizing the Council's efficiency.[180]

However, in its present state, the Arctic Council has failed to adapt. In the immediate present and in the near future, it is inefficient at resolving on-going disputes in the Arctic and preventing new ones from arising. As a result, this institution will not be considered when attempting to verify the hypothesis. Therefore, through the case studies, it must be determined whether UNCLOS itself is efficient.

[180] Canada's Arctic Council Chairmanship. (2013). Government of Canada. Retrieved from http://www.international.gc.ca/arctic-arctique/assets/pdfs/Canada_Chairmanship-ENG.pdf

Chapter 3: DISPUTES

3.1 Barents Sea

The first boundary dispute to be analyzed is the Barents Sea dispute between Norway and Russia, which was peacefully and successfully resolved in 2010. In analyzing this dispute, a particular interest will be put on the role played by the institutions present within the Arctic. Namely, UNCLOS' role will be thoroughly assessed.

The Barents Sea dispute was an ongoing dispute that lasted for close to forty years. It began in 1974 and was resolved through an agreement in 2010. It was announced on the 27th of April 2010, at a joint press conference, by Norwegian Prime Minister Jens Stoltenberg and then-Russian President Dmitri Medvedev. The Barents Sea dispute as a whole englobed three disagreements in different areas.

The disagreement begun in 1974 and stemmed from a three-part dispute. Overall, the issue encompassed a territorial claim of an area of around 175,000 square kilometers, more than Ireland and Portugal combined.[181] The area in question is home to one of the most important fisheries situated in northern Europe.[182] Moreover, it equally contains substantial amount of petroleum resources. It is also of significant strategic importance to Russia, as it is a gateway to Russia's only year-round ice free port located in Murmansk. This port is as an entrance to the Northern Sea Route (NSR), which is a shipping route used to transport oil and liquefied natural gas (LNG) from the East Barents and Kara Seas.[183] At the moment when the dispute originated, it was believed to hold an important amount of petroleum.[184]

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[181] Moe, A., Fjaertoft, D., & Overland, I. (2011). Space and timing: why was the Barents Sea delimitation dispute resolved in 2010? *Polar Geography*, *34*(3), p. 145

[182] *Ibid.*

[183] *Ibid.*

[184] Starbrun, K. (2009). The Grey Zone Agreement of 1978 Fishery Concerns, Security Challenges and Territorial Interests. *Fridtjof Nansens Institute*, p. 1

The first part of the disagreement was in regards to the Svalbard archipelago. The second was on a section of the Barents Sea, termed the 'Grey Zone'. The third was in regards to another area, coined the Loophole.[185]

The dispute revolving around the Svalbard archipelago ranged from the mouth of the Varangerfjord and extended to 200 nautical miles from the mainland of both countries. This portion of the Barents Sea dispute was caused by the necessity of a boundary for the continental shelf and the EEZ to be decided. The Grey Zone portion of the dispute was in the north of the Barents Sea. This section of the dispute stemmed from opposing maritime boundaries of the adjacent coasts of both countries. This section required a boundary delimiting the continental shelf and the EEZ of both countries. The Loophole was found in the Barents Sea itself, beyond the EEZ of both states. This portion of the dispute required a boundary for the continental shelf between the coasts of mainland Norway and Svalbard, and Russia.[186]

3.1.1 History and Background of the Dispute

In 1920, the Svalbard Treaty between Norway and the USSR was signed. Article 1 recognized Norway's complete sovereignty over the Archipelago of Svalbard (then called Spitsbergen). This extended to Bear Island.[187] The treaty granted the countries consisting of the High Contracting Parties—the United States, the United Kingdom, India, Denmark, France, Italy, Japan, the Netherlands and Sweden—the rights of fishing and hunting in the Archipelago of Spitsbergen and the territory associated with it. This also included Russian nationals and companies.

In 1926, there was a Decree on the Presidium of the USSR Central Executive Committee entitled 'On the Proclamation of Lands and Islands Situated in the Arctic Ocean as Territory

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[185] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), p. 10
[186] *Ibid.* P. 1
[187] The Svalbard Treaty. (1920). Retrieved from http://www.jus.uio.no/english/services/library/treaties/01/1-11/svalbard-treaty.xml

of the USSR'. This decree created what became known as the Russian Arctic sector, coined the 'sector theory' in Russia.[188] The Decree stated, in part, that territory within the northern Arctic Ocean were proclaimed to be under the sovereignty of the USSR. That included land and islands, whether they were discovered or undiscovered [189]

In 1957, following the Norwegian-USSR treaty and the USSR decree, the Varangerfjord Agreement was signed. It served to establish the limits of the territorial seas between mainland Norway and the Soviet Union.[190] This agreement did not cover the Barents Sea.

The negotiations for the delimitation of the maritime zones of the Barents Sea and the dispute itself began formally in Moscow, in 1974. Informally, it had begun in meetings held in 1970.[191] The cause of the dispute was the methods used by both countries to determine the boundary lines. Norway made its claim based on the median line principle, established by the 1958 Convention on the Continental Shelf.[192] The median line principle draws the boundary equidistant from the nearest point of the coastlines of both countries.

On their end the Soviet Union used Article 6 of the same Convention, which states that another boundary line than the median line can be justified based on 'special circumstances'.[193] The Soviet Union—followed by the Federation of Russia—invoked as special circumstances considerations of demographic and military nature.[194] The USSR argued that having sovereignty over islands within the Arctic, the territory should be

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[188] Bunik, I. V. (2008). Alternative Approaches to the Delimitation of the Arctic Continental Shelf. *International Energy Law Review*, (4), p. 118.

[189] Timtchenko, L. (1997). The Russian Arctic Sectoral Concept: Past And Present. *The Arctic Institute of North America*, *50*(1), p. 30

[190] Agreement between the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics concerning the sea frontier between Norway and the USSR in the Varangerfjord, 15 February 1957. (1957). United Nations. Retrieved from http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS1957SF.PDF

[191] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), 21.

[192] Moe, A., Fjaertoft, D., & Overland, I. (2011). Space and timing: why was the Barents Sea delimitation dispute resolved in 2010? *Polar Geography*, *34*(3), p. 147

[193] Convention on the Continental Shelf. (1958). United Nations. Retrieved from http://sedac.ciesin.columbia.edu/entri/texts/continental.shelf.1958.html

[194] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), 21.

delimited based on a meridian rather than a median. The Soviet Union's claim ranged from its border in the Varanger Fjord to the North Pole.[195] The USSR's (and eventually Russia's) initial position was based on its 1926 Decree of the Presidium of the USSR Central Executive Committee, which had served to define the Russian Arctic Sector's limits.[196] These boundaries were considered at first to be non-negotiable. However, when Russia ratified UNCLOS in 1997 they became implicitly negotiable.[197]

In 1978, a first breakthrough was reached, when both countries came to an agreement in regards to the Grey Zone.[198] The area it covered was found within the southern part of the disputed segment of the Barents Sea, and included undisputed EEZ of both countries. The agreement gave both stakeholders the right to exercise jurisdiction over fishing activity. This was provisional for one year, and has subsequently been extended for periods of one year. It has consistently been extended until the final agreement as a whole was reached.

In 2007, further progress was made. The 1957 Varangerfjord agreement was updated and clarified, extending the maritime boundary. The boundary now reached up to the southern part of where the disputed area of the Barents Sea began. Ultimately, in 2010, Norway and Russia ended the Barents Sea dispute by signing the maritime delimitation treaty. As an indirect consequence, this put an end to the Grey Zone Agreement, which was no longer necessary as it was covered by the treaty.

3.1.2 Agreement Reached

There are common explanations or hypothesis explaining why the dispute was suddenly resolved in 2010 after decades of stalemate. Before the role that UNCLOS played through

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[195] *Ibid.*
[196] Bunik, I. V. (2008). Alternative Approaches to the Delimitation of the Arctic Continental Shelf. *International Energy Law Review*, (4), p. 118.
[197] Moe, A., Fjaertoft, D., & Overland, I. (2011). Space and timing: why was the Barents Sea delimitation dispute resolved in 2010? *Polar Geography*, *34*(3), p. 149
[198] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), p. 2

the CLCS is explored, an analysis of some common explanations offered by academics and think tanks will be made.

Some explanations often cited are based on the loss of sea-ice (reduction of sea-ice extent). This reduction leads to a greater access of the region for economic activities. These activities include maritime transport, fishing, tourism and natural resource exploitation, in the form of minerals and petroleum. Until the dispute was resolved, neither states could claim any sovereign rights over the region and its important resources.[199] This explanation has a heavy emphasis on economic incentive for both states. To add weight on this, the 2010 treaty has provisions on the shared resources found within the Barents Sea. Article 4 and Annex I concentrate on fishing, stating that both Norway and Russia are to cooperate closely in the sphere of fisheries in order to maintain stability of their activities and of their allowable catch volumes. [200] As for Article 5 and Annex II, it deals with hydrocarbon resources. While this in itself could be a satisfying explanation, it is not the only argument offered. Other arguments insist that institutions played an important role.

In Moe, Fjaertoft and Overland's 'Space and Timing' (2011), six hypotheses are given to explain the sudden resolution after over four decades of dispute[201]. While the paper does not give a definite answer as to which hypothesis is more probable, it is acknowledged that UNCLOS potentially played a large role. Quoting the authors: "There are, however, several indications that a desire to reaffirm UNCLOS as the pre-eminent framework for Arctic governance may have been a particularly important motivation for the Russian government."[202] The authors of 'Space and Timing' therefore acknowledge the possibility of UNCLOS' role through Russia and Norway's desire to show the world that UNCLOS is an efficient international regime in fostering cooperation within the Arctic.

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[199] *Ibid.* p. 10

[200] Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean. (2010). Retrieved from https://www.regjeringen.no/globalassets/upload/ud/vedlegg/folkerett/avtale_engelsk.pdf

[201] Moe, A., Fjaertoft, D., & Overland, I. (2011). Space and timing: why was the Barents Sea delimitation dispute resolved in 2010? *Polar Geography*, *34*(3), p. 145

[202] *Ibid.*, p. 158

Other authors are in accordance with this hypothesis. In 'Russia's Policies on the Territorial Disputes in the Arctic' (2014), Konyshev and Sergunin highlight that Russia has underlined that any territorial and boundary dispute within the Arctic should be resolved diplomatically, based on international law and regimes.[203] Another example of a state's desire to put emphasis on UNCLOS' role as an institution within the region.

Sergei Lavrov, the foreign minister of Russia, stated to the *Globe and Mail* that while UNCLOS is not specific to the Arctic, it acts as the "primary and indispensable legal basis"[204] in the region. This corroborate the authors' hypothesis that UNCLOS is used to foster and encourage negotiation and cooperation.

From Lavrov's comment, it could be inferred that Russia aimed to show itself as a constructive actor within the Arctic, one that follows international law and abides by institutions. This puts weight on the role of UNCLOS as the primary hard law institution in the Arctic. It equally puts weight on the Ilulissat declaration, which has been previously analyzed.

It must be noted that the hypothesis of the key role of UNCLOS in the settlement of this decades-old dispute is not unanimous. Some academics argue that the economic incentive played a much larger role. According to Charles Emmerson, senior research fellow at Chatham House, the main reason for the agreement are oil and gas. He expands by explaining that Norway's North Sea production is nearing its limit and Russia's Siberian fields are near depletion.[205] In 'Maritime Delimitation in the Arctic' (2011), Ulfstein and Henriksen conclude that the agreement has been reached in coincidence to the current state of the Arctic, which is a greater accessibility of resources due to sea-ice loss.[206] Despite the working hypothesis of the paper being of economic nature, the authors recognize that the delimitation line was based on international law, and that both countries have "relevant factors identified

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[203] Konyshev, V., & Sergunin, A. (2014). Russia's Policies on the Territorial Disputes in the Arctic. *Journal of International Relations and Foreign Policy*, *2*(1), p. 80

[204] Lavrov, S., & Store, J. G. (2010, September 21). Canada, Take Note: Here's How to Solve Maritime Disputes. *The Globe and Mail*. Canada.

[205] Emmerson, C. (2010, September 29). Our friends in the north. *Russia Beyond the Headlines*. Russia.

[206] Ulfstein, G., & Henriksen, T. (2011). Maritime Delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law*, *42*(1), p. 10

in this regard in international law".[207] In other words, according to the authors, even if the reason for reaching a consensus is economic by nature, the institution present in the Arctic facilitated cooperation through preset guidelines as to how disputed territory should be delimited.

In 'Russian and Norwegian Petroleum Strategies in the Barents Sea' (2010), Arild Moe has noted that while the dispute was ongoing the Russian side was insistent to cooperate alongside Norway in exploiting the petroleum resources found within the disputed area.[208] The Norwegian side was against, emphasizing settlement of the dispute before cooperation. It was agreed in the 1980s that they would not neither do exploration or exploitation of petroleum resources in the disputed area.[209]

Some authors argue that both hypotheses (the key role of UNCLOS and the economic incentives) are valid, and can coexist in explaining the recent compromise. Konyshev and Sergunin are one example; they acknowledge the role of UNCLOS, and yet also claim that economic incentives were key in leading to the compromise. One key argument to support this hypothesis is Oslo's urgency in exploiting hydrocarbon resources in the disputed area due to the fact that its oil production had been in decline since 2001.[210]

While there is dissent to the cause of the settlement, the Barents Sea treaty serves as a reminder of the Ilulissat Declaration. The Arctic Five had issued a statement meant to stress the fact that they are committed to settle any overlapping territorial claims diplomatically, based on the comprehensive legal framework of UNCLOS.

The Barents Sea also serves to illustrate that contrary to what is often put forward by neoclassical realism, which is a potential scramble for territory, such scramble never manifested itself.

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[207] *Ibid. p. 6*
[208] Moe, A. (2010). Russian and Norwegian petroleum strategies in the Barents Sea. *Russian and Norwegian Petroleum Strategies in the Barents Sea*, *1*(2), p. 240
[209] Konyshev, V., & Sergunin, A. (2014). Russia's Policies on the Territorial Disputes in the Arctic. *Journal of International Relations and Foreign Policy*, *2*(1), p. 66
[210] *Ibid.* p. 70

Academics and think tanks do not necessarily agree on which explanation of the resolution is valid. However, there a general consensus that the agreement could lead to a positive environment of cooperation for petroleum resource exploitation, and to a period of unprecedented cooperation between both countries in Arctic affairs.[211] An example can be found in the news: Statoil and Rosneft have signed a cooperation agreement in the Barents Sea on the 5th of May 2012,[212,213] and have completed it on the 21st of June 2013.[214] This disagreement on the explanation of the resolution does not change the fact that the agreement was facilitated through the existence of UNCLOS. Norway and Russia reach a mutually beneficial agreement that could potentially not have been possible without UNCLOS' help.

3.1.3 Analysis of UNCLOS' Role

The economic incentive for the dispute resolution is an often used argument. It is even sometimes offered as the sole valid reason explaining why the dispute was resolved. However, this explanation alone is not sufficient; the reality is much more complex.

For example, fishing is—and was—of paramount importance in the Barents Sea. Even while the dispute was unresolved, both states were already exploiting that resource through the Grey zone Agreement. As for petroleum, while the dispute was ongoing it was assumed and accepted that there was an important hydrocarbon potential within the conflicted area. Doré, in a paper written in 1993, acknowledged that the hydrocarbon potential was broadly believed to be significant, as the region found itself in the vicinity of Russian waters known to be rich in hydrocarbons. Already at the time that the article was written, Russians had identified potential wells within the disputed zone. Furthermore, they had drilled wells in proximity to

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[211] Humpert, M., & Raspotnik, A. (2012). Norway's Energy Resource Policy and the Future of Bilateral Cooperation in the Barents Sea. *The Arctic Institute*.

[212] Statoil signs cooperation agreement with Rosneft. (2012, May 5). *Statoil*. Retrieved from http://www.statoil.com/en/NewsAndMedia/News/2012/Pages/StatoilRosneftMay2012.aspx

[213] Keil, K. (2015). Spreading Oil, Spreading Conflict? Institutions Regulating Arctic Oil and Gas Activities. *The International Spectator: Italian Journal of International Affairs*, *50*(1), p. 88.

[214] Statoil and Rosneft move forward with exploration cooperation. (2014, December 12). *Statoil*. Retrieved from http://www.statoil.com/en/NewsAndMedia/News/2013/Pages/21Jun_Rosneft.aspx

the median line, implying the presence of the resource.[215] In a map of the Russian Barents Sea and Kara Sea (figure 6 in his article), which includes the disputed area, Doré shows that there existed prospects. Some were solely identified, while others were either "ready for drilling, or with some initial drilling."[216]

The knowledge of the presence of resource does not completely discredit the economic incentive as being the catalyst for resolving the dispute. If it were the sole reason why the dispute had been resolved, it is reasonable to assume that it would not have lasted for four decades. UNCLOS, through the CLCS, played a more important role than economic incentives alone.

Certain elements are necessary to better understand why the dispute was suddenly resolved after over forty years, which is an explanation more complex than relying solely on economic factors. The elements of importance are: (1) UNCLOS itself, serving as a guideline for negotiations; (2) the Ilulissat Declaration, whereas the Arctic states had pledged to resolve disputes peacefully; and (3) the Commission on the Limits of the Continental Shelf, the missing link in common explanations of the resolution.

UNCLOS served as a general guideline for negotiations, even though the dispute was not brought forth to the ICJ. When considering the Ilulissat Declaration and the States' desire to show the international community their ability to cooperate and resolve disputes peacefully, the importance of the institution in the resolution of the Barents Sea dispute is better understood. The institution was key, especially through CLCS. UNCLOS' CLCS played a crucial role in the dispute's resolution. As the North Pole example has illustrated, both Norway and Russia acknowledged CLCS as the prime authority in determining the limits of the extended continental shelf. This can be inferred from their adherence to its mechanisms.

In 2006, on the 27th of November, Norway submitted its request to the CLCS according to Article 76, paragraph 8 of UNCLOS. The submission was for three different areas found in

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[215] Doré, A. G. (1993). Barents Sea Geology, Petroleum Resources and Commercial Potential. *Arctic*, *48*(3), p. 218

[216] *Ibid*. P. 214

the North East Atlantic and in the Arctic: The Loop Hole in the Barents Sea, the Western Nansen Basin in the Arctic Ocean and the Banana Hole in the Norwegian Sea.[217] The summary of the CLCS' recommendation followed in 2009, which was made public. Its analysis gives a crucial insight on how the CLCS helped solve the Barents Sea dispute.

The claim of interest for the purpose of this thesis is Norway's extended continental shelf claim for the Loop Hole in the Barents Sea. Upon submission of its claim, the CLCS agreed with Norway's data. It made a recommendation that no further data, whether scientific or technical, need to be gathered in order to support the claim of the regional location of its continental slope.[218] It was acknowledged by the CLCS that the Loop Hole was part of the submerged prolongation of landmasses of Norway and Svalbard.[219] The CLCS recognized that the seabed and subsoil within the Loop Hole, beyond the 200 nm of Norway and Russia's coasts was part of their continental shelves.[220] The commission made a formal recommendation in regards to Norway's delimitation of its extended continental shelf in the Loop Hole area. The recommendation emphasized that Norway should proceed to this agreement with the Russian Federation in order that both states share entitlement to resources located within the seabed.[221] While the CLCS acknowledged Norway's claim on the extended continental shelf of that area, there was more to it; it encouraged a peaceful dispute settlement between both states.

As the *Summary of the recommendations of the CLCS* illustrate, the recommendations were somewhat complex, and not entirely direct. The CLCS conceded that "Only a bilateral delimitation between Norway and the Russian Federation remains to be carried out to

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217 Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Kingdom of Norway. (2009). Oceans & Law of the Sea, United Nations. Retrieved from http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm

218 Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission made by Norway in Respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea on November 2006. (2009). Commission on the Limits of the Continental Shelf. Retrieved from http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf, p. 7

219 *Ibid.*

220 *Ibid.*, p. 8

221 *Ibid.,* p. 9

delineate the extent of each coastal State's continental shelf in the Loop Hole".[222] In essence, Norway's claim would not be finalized, nor would it acquire its maritime boundaries, until the dispute with Russia was resolved. That is, until a bilateral delimitation was reached. The final recommendation of the CLCS added emphasis regarding this. It stated that once a maritime boundary delimitation agreement was reached between both states, it should be deposited with the Secretary-General of the UN charts, and should show how the extended continental shelf was delimited.[223]

From analyzing the final recommendations of the CLCS on the extended continental shelf in the Loop Hole region of the Barents Sea, and considering the timeline of the Barents Sea dispute, it becomes clear how it acted as a catalyst to resolve the dispute. The Summary was issued in 2009, and in 2010, roughly one year after it was issued—and after forty years of stagnation—the disputed was solve. This settlement gave birth to a bilateral delimitation between Norway and the Russian Federation. This, in itself, is a compelling argument to demonstrate the efficiency of UNCLOS in dispute resolution within the Arctic.

The next section of this chapter will further analyze UNCLOS' efficiency in dispute resolution by examining the Beaufort Sea dispute. As it is still ongoing, parallels will be drawn to the now-resolved Barents Sea dispute.

[222] *Ibid.*
[223] *Ibid.*

3.2 Beaufort Sea

UNCLOS' efficacy at resolving boundary disputes can be examined for the Beaufort Sea dispute, as it has been explored in the Barents' Sea dispute. To reiterate what has been previously mentioned, while there are some important similarities, there is a key difference between the two: The United States has not ratified UNCLOS.

In the Barents Sea dispute, UNCLOS was effective as a regulator by acting as an important incentive to determine boundary delimitations. This incentive was made possible through the CLCS' process of delimiting the extended continental shelf. However, this would not have been possible if both states had not ratified UNCLOS, nor if they did not adhere to its mechanisms.

In the Barents Sea dispute, it was not until the CLCS made its final recommendation of resolving the boundary dispute that concrete progress was made. This recommendation is what led to the dispute settlement, after years of stagnation. The solution was not solely brought by the economic incentives it offered. Rather, it laid in international law and an international regime.

There are some key differences between both disputes. Other than the aforementioned key difference, another factor of importance is the nature of diplomatic relations between the countries. There are also some similarities to both disputes. The important economic incentive, in this case petroleum, is one of them.

Despite existing disputes in the Arctic, there is a consensus between academics and policy-makers that a new comprehensive treaty for Arctic governance is not currently necessary.[224] Policy-makers of the Arctic littoral states have agreed in the Ilulissat Declaration that UNCLOS is a sufficient legal framework, and no further overarching international legal regime is necessary in regards to Arctic governance.[225] As such, UNCLOS is sufficient to foster cooperation and to reduce uncertainty

[224] Baker, B. (2009). Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian-U.S. Cooperation in the Beaufort Sea. *Vermont Law Review*, *34*(057), p. 60
[225] The Ilulissat Declaration. (2008, May 28).

Geographically, the Beaufort Sea is located in the Arctic Ocean between Alaska and the Canadian Arctic archipelago, north of the Mackenzie River delta.[226] The overlapping territorial claims encompasses approximately 6,250 square nautical miles, which translates to 16,187 square kilometers, found north of Alaska and the Yukon and Northwest territories. This region is potentially abundant in hydrocarbon resources.[227] As with other disputes in the Arctic, there is an important relationship linking law, policy, science and technology.[228] A better comprehension of science's role in informing can assist both lawyers and policymakers to better address the scientific realities of the natural resources being regulated.[229]

Already in the 1970s it was established that the disputed area of the Beaufort Sea contained hydrocarbons.[230] Recently, there has been important findings and resource expenditures in exploring the region that further confirmed this. For example, in 2006 a deposit of up to 240 million barrels was discovered in the Northwest Territories by Devon Canada.[231] In 2007, Imperial Oil Ltd and its sister company ExxonMobil Canada acquired an exploration licence in exchange for spending C$585 million on exploration.[232] Following this, in 2008 BP won a C$1.2 billion bid on a Beaufort Sea parcel. In 2010 it was Chevron Corp who won a parcel following a C$103 million bid.[233]

The dispute itself remains unresolved with both countries limiting themselves at agreeing to disagree. There are differing opinions explaining why the dispute is still ongoing. Some authors argue that cooperation and a compromise in the Beaufort Sea can be reached without

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[226] Baker, J., & Byers, M. (2012). Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute. *Ocean Development & International Law*, *43*(1), p. 71.
[227] Baker, B. (2009). Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian-U.S. Cooperation in the Beaufort Sea. *Vermont Law Review*, *34*(057), p. 58
[228] *Ibid.* P. 62
[229] *Ibid.* P. 62
[230] Baker, J., & Byers, M. (2012). Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute. *Ocean Development & International Law*, *43*(1), p. 71.
[231] Park, G. (2007). Beaufort find is oil, not gas. *Petroleum News*. Retrieved from http://www.petroleumnews.com/pntruncate/304958258.shtml

[232] Imperial, ExxonMobil to explore Beaufort Sea for oil, gas. (2007). *CBC News*. Retrieved from http://www.cbc.ca/news/canada/north/imperial-exxonmobil-to-explore-beaufort-sea-for-oil-gas-1.642714
[233] Vanderklippe, V. (2012). Reviving Arctic oil rush, Ottawa to auction rights in massive area. *The Globe and Mail*. Retrieved from http://www.theglobeandmail.com/news/politics/reviving-arctic-oil-rush-ottawa-to-auction-rights-in-massive-area/article4184419/

resolving the boundary dispute.[234] It is the view of other authors that boundary issues concerning Canada remain unresolved for the time being as there is no necessity to solve them just yet.[235] In their paper, 'Canada's Arctic Interests and Responsibilities' (2008), Okalink, Huebert and Lackenbauer explain that the ambiguity of the legal status of the Beaufort Sea has been to the advantage of both countries.[236] However, the same authors do acknowledge that the picture as a whole could change, in part due to global warming and the opening of the Arctic.[237]

Notwithstanding the Beaufort Sea dispute, there are examples of cooperation between the two countries in that region. In 1974, both governments established the *Joint Marine Pollution Contingency Plan*. Its aim is to deal with oil spills and other sources of pollution from vessels.[238] It also contained an annex dealing with the Beaufort Sea, which defined jurisdiction, roles and responsibilities. In January 11, 1988, the countries signed an agreement on Arctic cooperation.[239] In April 28 2006, they renewed the North American Aerospace Defense Command (NORAD) agreement, as well as broadened its mandate to include maritime matters.[240] In 2012, there was a third agreement signed, the Tri Command Framework for Arctic Cooperation.[241]

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[234] Baker, B. (2009). Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian-U.S. Cooperation in the Beaufort Sea. *Vermont Law Review*, *34*(057), p. 69

[235] Gray, D. H. (1997). Canada's Unresolved Maritime Boundaries. *IBRU Boundary and Security Bulletin*, p. 69

[236] Griffiths, F., Okalink, P., Lalonde, S., Huebert, R., & Lackenbauer, W. (2008). Canada's Arctic Interests and Responsibilities. *Canadian International Council*, *65*(4), P. 10

[237] *Ibid.*

[238] Bilder, R. (1970). The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea. *Michigan Law Review*, *69*(1), p. 5

[239] Chung, T., & Hyslop, C. (2008, October). The Arctic: A Canadian Parliamentary Chronology. Parliament of Canada. Retrieved from http://www.parl.gc.ca/Content/LOP/researchpublications/prb0811-e.htm

[240] Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation. (1988, January). Canada Treaty Information. Retrieved from http://www.treaty-accord.gc.ca/text-texte.aspx?id=101701

[241] Government of Canada. (2015). *The Canada-U.S. Defence Relationship*. National Defence and the Canadian Armed Forces. Retrieved from http://www.forces.gc.ca/en/news/article.page?doc=the-canada-u-s-defence-relationship/hob7hd8s

3.2.1 History and Background of the Dispute

Controversy between Canada and the United States in the Arctic predates the Beaufort Sea Dispute. The first initial case in recent history is the 1969 Manhattan crisis. In 1969, the U.S. tanker *S.S. Manhattan* navigated through the Northwest Passage (NWP). This was done unilaterally, without obtaining permission from the Canadian government. In retaliation, Canada enacted the *Arctic Waters Pollution Prevention Act* in 1970.[242]

The Pollution Prevention Act gave the Canadian government legal jurisdiction over vessels navigating through the NWP. However, this was disregarded by the American government. In 1985, another American vessel sailed through the Canadian Arctic Archipelago, the ice-breaker *Polar Sea*. This lead to further tensions between both governments.[243] The American government did not ask permission to sail in the NWP since it did not agree with Canada's position that the NWP lied within its territory. The status of the NWP is disputed; the Canadian government claims that it belongs to its internal waters due to the geography of the Arctic Archipelago. On the other hand, the American government claims that the NWP has an international status. By having an international status, it gives vessels from any states free right of passage as per UNCLOS. As of today, just as the Beaufort Sea dispute remains unresolved, so does the status of the NWP remains an issue between the two states.

To better understand the Beaufort dispute, it is necessary to take into consideration the treaty signed between Russia and the United Kingdom in 1825. It served in part to set the limit of the states' borders on the North West Coast of North America. The treaty delimited the eastern border of Alaska, which belonged to Russia, as the meridian line of the 141st degree. This line was to be prolonged "as far as the frozen ocean".[244] The treaty is crucial to the dispute, as it is used as an argument by Canada.

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[242] Bilder, R. (1970). The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea. *Michigan Law Review*, *69*(1), p. 3

[243] Briggs, P. J. (1990). The Polar Sea Voyage and the Northwest Passage Dispute. *Armed Forces & Society*, *16*(3), p. 437

[244] Convention Between Great Britain and Russia. (1825). Retrieved from http://www.explorenorth.com/library/history/bl-ruseng1825.htm

The Beaufort Sea dispute began officially in 1976. Both states made a claim for a 200 miles fishing zone within the Beaufort area, which overlapped one another.[245] The claims and arguments of both parties, which are leading to the dispute itself, are similar to those that were existent in the Barents Sea. Despite not having ratified UNCLOS, the United States is a proponent of the median line. The American government asserts that Canada is bound by Article 6 of the 1958 Convention on the Continental Shelf. Canada objects this argument by affirming that there are 'special circumstances' justifying the sector approach delimitation method rather than the median line.

Canada's claim of special circumstances originates from the 1825 boundary treaty signed between the United Kingdom and the Russian Empire which sets the 141st meridian line in the Beaufort Sea. The United States became the successor to the Russian Empire when Alaska was purchased, and Canada the successor to the United Kingdom. The Canadian government claims that the land and maritime boundary should be set at the 141st meridian, according to the treaty. In contrast, the American government disagrees, claiming that it only applies to land boundary, not maritime boundary. The United States believe that the boundary should be delimited by an equidistant line from Yukon and Alaskan coastlines.[246] This position has not changed over the decades, and the Beaufort Sea remains an area under dispute by both states.

Initially, the Beaufort Sea dispute was solely understood as a dispute of a maritime area extending at the northern limit of both state's EEZs. Recent mapping of their seabed has brought to light the possibility of both states of extended continental shelves beyond the 200 nm limit, towards the North Pole.[247] These recent findings have acted as a complication for the dispute.

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[245] Baker, J., & Byers, M. (2012). Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute. *Ocean Development & International Law*, *43*(1), p. 71.
[246] Renouf, J. K. (1988). *Canada's Unresolved Maritime Borders* (p. 116). New Brunswick: University of New Brunswick. P. 9
[247] Baker, J., & Byers, M. (2012). Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute. *Ocean Development & International Law*, *43*(1), p. 71.

According to Baker and Byers, if the states extend their continental shelves, it could ease negotiations towards a settlement. The authors further argue that either Canada or the United States could recognize its counterpart's position, as long as it applies to both inside the 200 nautical miles and beyond. This recognition could be done unilaterally or bilaterally.[248] What this translates to is that both states would gain and lose. There would be a gain within the EEZ and in turn a loss in the continental shelf, or the opposite; that is, a loss in the EEZ and a gain in the continental shelf. If states are more interested in their absolute gains, then they will be interested in such a compromise, as they will have a gain in one of the two areas. However, if both states emphasize more relative gains as would argue neoclassical realism, they might be worried that they are losing in one area while the other party is winning. That is, the fear of relative gains could, in this case, act as an inhibitor for the two parties to cooperate and reach a bilateral settlement.

While UNCLOS offers a solution, the impediment of relative gain might affect both parties' disposition at cooperating. This becomes even truer since in this situation, the institution is unable to reduce the existence of relative gains, despite its stability and importance within the region. The inevitability of relative gains—one state's loss translates directly into the other state's loss—likely acts as a strong inhibitor in reaching an agreement. The presence of UNCLOS can however help alleviate the fear of cheating, if Canada and the United States were to reach an agreement. By having very specific and detailed rules and guidelines, UNCLOS effectively reduces the propensity of cheating.

3.2.2 Gulf of Maine comparison

The Gulf of Maine dispute is similar to the Beaufort dispute as both stem from a disagreement in delimiting boundaries. It is equally similar as they are both in regards to access to their respective region's natural resources. For the former it was fish stock, and for the latter it is petroleum. The Gulf of Maine dispute between Canada and the United States serves as a proper indicator to better understand the Beaufort dispute. It did not create a precedent for

[248] *Ibid.* p. 86

future disputes; rather, it gives an insight as to why the two countries have not yet brought the dispute in the Arctic to the ICJ.

The Gulf of Maine dispute began in the 1960s and was initially pertaining to the continental shelf, resulting from petroleum exploration in certain areas of Georges Bank. Following this, in 1976-1977 there were new elements that were added to the dispute, namely in the form of living resources (fish stocks) within the disputed area. This occurred as both countries began delimiting their EEZs, which overlapped. Due to the inability to arrive to a consensus, the Gulf of Maine case was brought to the ICJ and was ultimately resolved in 1984. The decision applied to both boundaries simultaneously; that is, it applied to both the fisheries boundaries and the continental shelf.[249] This type of resolution could be adapted to the Beaufort Sea.[250]

The Gulf of Maine dispute illustrates a crucial conclusion that is necessary to the analysis of the Beaufort Sea dispute. If Canada and the United States are to resort to a similar binding resolution method for disputes in the future, it can be assumed that they will carefully weigh the potential rewards and the risks of letting a third party settle the dispute. If they resort to a third party, it is possible that its interpretation of international law might lead to a decision that is either prejudicial or unsatisfactory to one of the parties, or both. This conclusion can explain why both countries have yet to rely on an independent adjudicative body to resolve the dispute, like they did with the Gulf of Maine. As long as the possibility to reach a mutually benefiting agreement bilaterally exists, it reduces the appeal of subjecting the dispute to a binding resolution mechanism. However, it should be noted that this does not rule out the possibility of using a third party to settle disputes in the future.

3.2.3 Current Status

Similar to the Barents Sea, the Beaufort Sea equally serves to show that the pessimistic view of scramble for territory in the Arctic has not occurred, and that it remains unlikely that it

[249] Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (International Court of Justice October 1984).
[250] Renouf, J. K. (1988). *Canada's Unresolved Maritime Borders* (p. 116). New Brunswick: University of New Brunswick. P. 29

will occur. As of yet, however, it equally fails to show that the institutions, in their present form, are sufficient to assist in the settlement of the dispute.

As it was the case with the Barents Sea dispute, there is an important economic incentive in the case of the Beaufort Sea in the form of petroleum resources. As it is equally the case with the Norwegian-Russian dispute, it seems that the economic incentive has not been sufficient in itself to lead to a peaceful settlement.

Considering all the aforementioned elements, why has there been a lack of progress? It is a clear contrast to the Norwegian-Russia border dispute that has found a peaceful settlement in 2010. As it was the case for the Barents Sea dispute, both Canada and the United States would greatly benefit from resolving the dispute; just as the Barents Sea is rich in resources, the same is true for the Beaufort Sea.

One of the key differences between the two, previously mentioned, is that the United States has not ratified UNCLOS. Although it does recognize is as international law, it is it not constrained to abide by it.

CLCS was vital in resolving the dispute between Norway and Russia. However, since the United States has not ratified UNCLOS, they equally are not party to CLCS, nor will they (until they ratify UNCLOS) submit any claims to it. A case similar to the Norwegian-Russian dispute that was resolved thanks to CLCS' recommendation does not directly apply to the Beaufort Sea. In short, the United States does not have the same kind of incentives that Norway and Russia had. However, this does not imply that the Barents Sea resolution cannot be used as a guideline for the ongoing Beaufort Sea dispute.

3.2.4 Analysis of potential solutions

All three disputes studied illustrate a common denominator; parties advocate different methods to divide the disputed area. In order to resolve such a dispute, an alternative delimitation method acceptable for both parties must be found. This was accomplished bilaterally between Norway and Russia for the Barents Sea dispute, and imposed by the ICJ

for the Gulf of Maine dispute. In both cases, the solution was found with the help of an international institution; with UNCLOS' CLCS for the former, and with the ICJ for the latter.

From this observation, it becomes evident that an alternative delimitation criteria is needed to resolve the boundary dispute of the Beaufort Sea. This dispute can be settled bilaterally, as was the Barents Sea's case, or by relying on a third party, as was the Gulf of Maine's case. Using the ICJ to resolve the dispute translates in an uncertain result for both parties. Since the Beaufort Sea is a petroleum-rich area, it could explain why it this solution has yet to be used.

The Gulf of Maine does show that international law can resolve a dispute through a binding decision. It equally shows that an institution is able to successfully resolve a dispute. The Barents Sea dispute illustrates that a bilateral agreement is possible, one that is mutually beneficial for both parties. It also shows the potential for institutions, when appropriate to the dispute, to help find a satisfactory solution to both parties through its rules and guidelines. Norway and Russia were able to put aside their fear of the other state's relative gain in order to capitalize on absolute gains. The same logic could be equally true of Canada and the United States. Only by relinquishing the fear of relative gains can the dispute be settled. In turn, this will enable the states to capitalize on their respective absolute gains. That is, to benefit from resolving the dispute. This is why a flexible approach with compromises from both parties is necessary to reach a consensus, as was the case with Norway and Russia. Three potential solutions are explored.

A first alternative would be for both states to apply a similar delimitation type that was used to solve the Barents Sea. In the Barents Sea dispute, both Norway and Russia gained access to sensibly the same area in terms of territory through a modified equidistant line. Canada and the United States could follow the example and adopt a modified equidistant line in order to reach a result which would yield no winner or loser over the other. This modified line would be based on the median line, but modified to reach an equitable result. This would satisfy both parties' argument and claim: It would agree with the equidistant line favored by America while respecting Canada's coastline.

As a second option, either the Canadian or American government can accept the other party's claim as is. This option follows what was argued by Baker and Byers in their paper 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute' (2012). As the authors have argued, accepting the positions as-is would yield in itself to a compromise. Where one state would benefit from the EEZ perspective, the other would benefit from the continental shelf perspective.

Alternatively, a third option would be to leave the dispute unresolved, but aim for joint resource development and exploitation. Canada and the United States could jointly explore and develop petroleum resources in that region, despite the unresolved boundary dispute. This would grant them equal benefits while avoiding a complex dispute resolution process. Instead of determining the boundary of the disputed areas, both states would have to determine the boundary of the development zone, and decide how it will be administered and how resources will be shared.

The Barents Sea served to show that a satisfactory consensus can be reached bilaterally. More importantly, it showed how an institution was able to guide two states to reach such consensus, after decades of stagnation. The Gulf of Maine also served to show that a decision can be rendered by a third party. However, that decision is binding, and the states have very little control over it. If Canada and the United States want to maintain control of how the Beaufort Sea is divided, the former option is the ideal alternative. Only by using the Barents Sea dispute as a guideline, and taking advantage of institutions at play in the Arctic can a mutually beneficial consensus be reached.

3.2.5 UNCLOS' Efficiency

From those two Arctic case studies, we can deduct that UNCLOS has a mixed record in the region. While it was a key player in the Barents Sea resolution, it was unable to help achieve a consensus in the Beaufort Sea dispute. This failure could be explained by the fact that America has not ratified UNCLOS, and has no pressure to abide by its mechanisms. This isn't an alleviating argument for UNCLOS' efficiency; rather, it is a hypothesis that could

explain why it has failed to help both states reach an agreement for the Beaufort Sea. As long as the United States does not ratify UNCLOS, it will have no incentives to abide by its mechanisms, which lessens the institution's efficiency within the region. Despite this, the Gulf of Maine case, which is strikingly similar to the Beaufort Sea dispute, was successfully resolved by one of the dispute mediation methods of UNCLOS, the International Court of Justice. Such method could equally be used for the Beaufort Sea. Hence, the Gulf of Maine shows that, just as was the case for the Barents Sea dispute, that UNCLOS and its mechanisms can be quite successful in resolving disputes.

Despite this failure to help resolve the Beaufort Sea, it seems that states acknowledge UNCLOS and the CLCS' role as a mediator within the Arctic. The Barents Sea is a clear example. Instead of insisting on unilateral claims, Norway and Russia have shown that they are ready to follow the CLCS' recommendations. The Ilulissat Declaration serves to remind the international community that UNCLOS is vital and integral to Arctic cooperation. That is, its guidelines are key for states to cooperate successfully, and are equally key to bring order in an otherwise anarchic environment. While the case of the North Pole is far from settled, it seems that the current direction of the states is to follow UNCLOS' mechanisms for the extended continental shelf.

Ultimately, while UNCLOS does not have a perfect record, it does remain an efficient institution in resolving, or at the very least, mitigating disputes. Its efficiency is, however, dependant on a state's willingness to observe its legal norms. Up to this point, UNCLOS has shown efficiency at resolving disputes. However, there exists other long-standing disputes within the Arctic that have yet to be resolve, which will continuously test the institution's role within the region.

CONCLUSION

Due to climate change and global warming, the Arctic has become increasingly accessible for resource exploitation. On an economic standpoint, it has become much more attractive over the past decades. While the focus is often on petroleum resources, there are other potential economic activities of note within the region: Fisheries, tourism, shipping and mining. This newfound interest in Arctic affairs can be translated in territorial competition between Arctic states in order to claim sovereignty over natural resources found within those territories, namely for those lying beneath the ocean.

The aim of this thesis was to analyze which International Relations paradigm best describes current Arctic affairs; whether it's a propensity for conflict as would argue neoclassical neorealism, or on the opposite, a tendency for cooperation as would argue institutional liberalism. From the literature review, it has been found that both theories are key to understanding the state of affairs in the Arctic. The literature can be classified as either generally optimist, or generally pessimist. The former tends share the beliefs of neoliberalism, that is, that institutions are sufficient in fostering cooperation. The latter shares beliefs with neoclassical realism, arguing that there is a strong potential scramble for resource and territory in the region.

An opening of the region due to global warming translates to a higher potential for disputes and conflicts, and can lead to tensions between states. As such, it leads to a higher spectrum of anarchy. This is where the role of institutions within the region becomes key. Understanding the diplomatic situation of the Arctic is vital as the region becomes increasingly accessible through the physical changes it is undergoing.

In order to determine the possibility of cooperation rather than dispute, it is important to study in-depth the institutions at play within the Arctic. Two institutions were chosen: the United Nations Convention on the Law of the Sea (UNCLOS) and the Arctic Council. It was, however, determined that the Arctic Council's role and nature was irrelevant in dispute avoidance and resolution. While it has a role of facilitating cooperation and communication between countries, it is not equipped for a dispute resolution role. This is due to its lack of a

legal personality and the limitations of its mandate. UNCLOS was analyzed to determine if it is able to facilitate cooperation between the states, but also to determine if its dispute resolution mechanisms were efficient.

In order to analyze UNCLOS' efficiency, two case studies were used. Both the Barents Sea dispute, between Norway and Russia, and the Beaufort Sea, between Canada and the United States, were studied. The former lasted for over four decades, and was ultimately resolved in 2010. The latter is still ongoing. The Barents Sea dispute is a prime example of how an institution was able to facilitate dispute resolution between two states, despite a stalemate that lasted for decades. This was mainly made possible through the recommendations by the Commission on the Limits of the Continental Shelf (CLCS). As such, UNCLOS was able to foster cooperation, as predicted by neoliberalism. Furthermore, the Barents Sea's resolution serves as a guideline for existing and future disputes within the polar region, and could be of positive influence on the Beaufort Sea Dispute.

The second case study was the Beaufort Sea dispute, which remains unresolved as of today. In the past, Canada and the United States have found themselves with a similar dispute in the Gulf of Maine, and it was resolved through the International Court of Justice, which enforced a binding solution on the two states. The use of the ICJ has not yet been solicited in the case of the Beaufort Sea, with both parties choosing, currently, to agree to disagree.

Overall, within the Arctic UNCLOS has ambiguous success. UNCLOS' CLCS was efficient at aiding Norway and Russia in resolving their dispute. In the case of the Beaufort Sea, it has failed to help Canada and the United States to reach a consensus. Despite the mixed track record, states—other than America—remain committed to UNCLOS. This can be inferred from the Ilulissat Declaration, as well as the submitted claim for the Lomonosov Ridge to the CLCS by the states who have ratified UNCLOS. Only the United States have failed to submit its claim, as it has not ratified it.

By doing so, states show that they believe UNCLOS to be a decisive mediator within the region, and also indicate that they value its recommendations. They show that despite the anarchic state of the international system, the institution present in the Arctic has been able

to foster cooperation and are able to make mutually beneficial agreements. They show, as they have pledged in Ilulissat, that UNCLOS is sufficient.

From the literature, it is apparent that conflicting opinions about the state of affairs in the Arctic can be classified as either views in agreement with neoclassical realism—that is, a scramble for resources or territory—or views in agreement with neoclassical liberalism—one where the Arctic disputes are managed through cooperation, with the assistance of institutions. It can be further observed that contrary to what neoclassical realism would believe of the potential for Arctic affairs, as of yet there has been no scramble for resources or for territory.

Whether this will remain true in the future remains to be seen. As it was briefly explored, there is currently a contentious area within the Arctic that is being claimed by all four littoral states that have ratified UNCLOS, that is, Canada, Denmark, Norway and Russia. This, and other disputes within the Arctic, are an indication of future challenges to be faced by the institution.

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